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90TH CONGRESS 2d Session

HOUSE OF REPRESENTATIVES

DOCUMENT No. 266

COMPILATION

OF THE

SOCIAL SECURITY LAWS

THE SOCIAL SECURITY INCLUDING AS AMENDED, AND RELATED ENACTMENTS THROUGH JANUARY 2, 1968

VOLUME I





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COMPILATION

OF THE

SOCIAL SECURITY LAWS

INCLUDING THE SOCIAL SECURITY ACT, AS AMENDED, AND RELATED ENACTMENTS THROUGH JANUARY 2, 1968

VOLUME I

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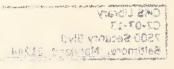
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HOUSE RESOLUTION NO. 1076

[Submitted by Mr. Mills]

IN THE HOUSE OF REPRESENTATIVES, May 23, 1968.

Resolved, That the compilation of social security laws, prepared by the Social Security Administration for the use of the Committee on Ways and Means, be printed as a House document; and that one thousand additional copies be printed for the use of the Committee on Ways and Means.

COMPILED BY THE
SOCIAL SECURITY ADMINISTRATION
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE



PREFACE

The Social Security Act

The Social Security Act was enacted August 14, 1935. Since then it has been amended on a number of occasions. Some of the laws amending the original Act have made rather extensive and significant changes. A listing of all the laws which have amended the Social Security Act can be found in the Appendix.

Administration of the Social Security Act

The Social Security Board was responsible for administration of the original Social Security Act except for parts 1, 2, 3, and 5 of title V (which were administered by the Children's Bureau, then in the Department of Labor); part 4 of title V which increased the appropriations authorized for carrying out the Act of June 2, 1920 (now the Vocational Rehabilitation Act); and title VI which authorized grants to the States for public health work.

The Social Security Board was transferred to the Federal Security Agency by Reorganization Plan No. 1 of 1939 and the Board's functions were thenceforth to be carried on under the direction and supervision of the Federal Security Administrator. Reorganization Plan No. 2 of 1946, transferred the functions of the Social Security Board, as well as the functions of the Children's Bureau and the functions of the Secretary of Labor under title V of the Social Security Act, to the Federal Security Administrator and the Board was abolished.

The Bureau of Employment Security, with its unemployment com-

pensation and employment service functions, was transferred from the Federal Security Agency to the Department of Labor by Reor-ganization Plan No. 2 of 1949.

The Department of Health, Education, and Welfare was established by Reorganization Plan No. 1 of 1953 with a Secretary of Health, Education, and Welfare as the head of the Department. All functions of the Federal Security Agency, which was abolished, were transferred to the Department of Health, Education, and Welfare. The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare.

The Compilation of the Social Security Laws

This compilation consists of two volumes. Volume I contains: (a) The Social Security Act as amended, as in effect on January 2, 1968, and (b) pertinent provisions of the Internal Revenue Code of 1954. Volume II contains: (a) sections of amending acts having a current effect on the Social Security Act but which are not part of the Social Security Act; (b) provisions of the Social Security Act repealed by VI PREFACE

the amending acts; and (c) provisions of other laws relating to the

Social Security Act.

In each title of the Social Security Act and in each of the laws relating to the Social Security Act contained in volume II, the text note series begins with the number one. In each of the following divisions of the compilation the text footnote series also begins with the number one: Sections of the Amending Acts Having a Current Effect on the Social Security Act; Superseded Provisions of the Social Security Act; and Selected Provisions of the Internal Revenue Code. Unless otherwise indicated, where a footnote refers to a deletion of material from the text, the footnote numeral is shown in the text at the point at which the deleted material appeared and, where a footnote refers to an addition of material, the footnote numeral is shown in the text immediately following the material which has been added.

References in the Act to the "Federal Security Administrator" or "Administrator" were changed to the "Secretary of Health, Education, and Welfare" or "Secretary," respectively, since Reorganization

Plan No. 1 of 1953, in effect, made this change.

Section 7852(b) of the Internal Revenue Code of 1954 provides that references in other laws to any provision of the Internal Revenue Code of 1939 shall, "where not otherwise distinctly expressed or manifestly incompatible with the intent thereof," be deemed to refer to the corresponding provision of the new Code. Consequently, references in the Social Security Act to provisions of the Internal Revenue Code of 1939 have been changed accordingly.

From time to time, appropriation acts have carried provisions of a substantive nature affecting the Social Security Act. It is, therefore, desirable to refer to the current appropriation act or acts to determine whether any such provision affects the portion of the Social Security

Act in which the reader may be interested.

Effect of Compilation

This compilation has been prepared solely for convenient reference purposes. It does not have the effect of law.

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SOCIAL SECURITY ACT, AS AMENDED

AN ACT

To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—GRANTS TO STATES FOR OLD-AGE ASSIST-ANCE AND MEDICAL ASSISTANCE FOR THE AGED 12

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¹Title I is administered by the Social and Rehabilitation Service, Department of Health,

¹Title I is administered by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. Title I of the Social Security Act appears in the U.S. Code as sees. 301–306, subchapter I of title 42. P.L. 87–543, sec. 141(b), approved July 25, 1962, provides as follows: "(b) No payment may be made to a State under title I, X, or XIV of the Social Security Act for any period for which such State receives any payments under title EVIV of such Act or any period thereafter."

Section 10(d) of Public Law 88–525 (The Food Stamp Act of 1964) provides as follows: "(d) Participating States or participating political subdivisions thereof shall not decrease welfare grants or other similar aid extended to any person or persons as a consequence of such person's or persons' participation in benefits made available under the provisions of this Act or the regulations issued pursuant to this Act."

Sec. 701 of the Economic Opportunity Act of 1964 (42 U.S.C. 2981) provides as follows: "Sec. 701. (a) Notwithstanding the provisions of titles I, IV, X, XIV, and XIX of the Social Security Act, a State plan approved under any such title shall provide that—

"(1) the first \$85 plus one-half of the excess over \$85 of payments made to or on behalf of any person for or with respect to any month under title I or II of this Act or any program assisted under such title shall not be regarded (A) as income or resources of such person in determining his need under such approved State plan, or (B) as income or resources of any other individual under such approved State plan;

"(2) no payments made to or on behalf of any person for or with respect to any month under such title or any such program shall be regarded as income or resources of any other individual in determining the need of such other individual in determining the need of such other individual in determining the need of other individual in determining the need of other individual in determining the need of such other individual in determining the need of such other

of any other individual in determining the need of such other individual under such approved State plan except to the extent made available to or for the benefit of such other individual; and

"(3) no grant made to any family under title III of this Act shall be regarded as income or resources of such family in determining the need of any member thereof under such approved State plan.

"(b) No funds to which a State is otherwise entitled under title I, IV, X, XIV, or XVI of the Social Security Act for any period before July 1, 1968, shall be withheld by reason of any action taken pursuant to a State statute which prevents such State from complying with the requirements of subsection (a)."

P.L. 90-248, sec. 234(c), provides:

"(c) Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such requirements."

See also sec. 121(b) of P.L. 89-97, p. 510, vol. II, for restriction on payment to States receiving payments under title XIV

² See also sec. 121(b) of P.L. 89-97, p. 510, vol. II, for restriction on payment to States receiving payments under title XIX.

³ This table of contents does not appear in the law.

Appropriation

Section 1. For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of aged individuals who are not recipients of old-age assistance but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for selfcare, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary"), State plans for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged.4

way of a contract of insurance or guaranty.

"SEC. 1104. Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof."

^{*}Title VI of P.L. 88-352 (Civil Rights Act of 1964) provides as follows:

"Sc. 601. No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

"Scc. 602. Each Federal department and agency which is empowered to extend Federal financial assistance to any program or activity, by way of grant, loan, or contract other than a contract of insurance or guaranty, is authorized and directed to effectuate the provisions of section 601 with respect to such program or activity by issuing rules, regulations, or orders of general applicability which shall be consistent with achievement of the objectives of the statute authorizing the financial assistance in connection with which the action is taken. No such rule, regulation, or order shall become effective unless and until approved by the President. Compliance with any requirement adopted pursuant to this section may be effected (1) by the termination of or refusal to grant or to continue assistance under such program or activity to any recipient as to whom there has been an express finding on the record, after opportunity for hearing, of a failure to comply with such requirement, but such termination or refusal shall be limited to the particular political entity, or part thereof, or other recipient as to whom such a finding has been made and, shall be limited in its effect to the particular program or part thereof, in which such noncompliance has been so found, or (2) by any other means authorized by law: Provided, however, That no such action shall be taken until the department or agency concerned has advised the appropriate person or persons of the failure to comply with the requirement and has determined that compliance cannot be secured by voluntary means. In the case of any action terminating, or refusing to grant or continue, assistance because of failure to comply with a req

State Old-Age and Medical Assistance Plans

Sec. 2. (a) A State plan for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged must-

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reason-

able promptness;

(5) provide (A)⁵ such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; 6

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the

correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the State plan; 7

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and

earlier date as of which the modification of the State plan to comply with this amendment is approved.

This requirement has in effect been modified by sec. 618 of the Revenue Act of 1951, 65 Stat. 569, as amended by sec. 141(e) of P.L. 87-543 effective July 25, 1962. Sec. 618 of the Revenue Act of 1951 now provides:

"No State or any agency or political subdivision thereof shall be deprived of any grantin-aid or other payment to which it otherwise is or has become entitled pursuant to title I (other than section 3(a) (3) thereof), IV, X, XIV, or XVI (other than section 1603(a) (3) thereof) of the Social Security Act, as amended, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes."

⁵ P.L. 90-248, sec. 210(a)(1)(A), deleted "provide" and inserted "provide (A)".

⁶ P.L. 90-248, sec. 210(a)(1)(B), added clause (B); effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with this amendment

that such assistance shall be furnished with reasonable prompt-

ness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other-income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than \$7.50 ° per month of any income and (ii) of the first \$80 per month of additional income which is earned the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder; °

(B) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the

extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; and

(11) if the State plan includes medical assistance for the aged—
(A) provide for inclusion of some institutional and some

noninstitutional care and services;

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom;

(D) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the

extent of such assistance; and

(E) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery

⁸ P.L. 90-248, sec. 213(a) (1), inserted "\$7.50" in lieu of "\$5".

⁹ See also footnote 1, of this title, relating to Food Stamp Act and Economic Opportunity

See also sec. 1109 of the Social Security Act for modification of this sec. 2(a) (10) (A) with respect to disregarding amounts disregarded for any individual under any approved public assistance plan in determining need for old-age assistance or medical assistance for the aged under a plan approved under this section 2.

(except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(12) if the State plan includes assistance to or in behalf of individuals who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the

institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients who would otherwise need care in such institutions, including appropriate medical treatment and other assistance; for services referred to in section 3(a)(4)(A) (i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost

of institutional care for such patients; and

(13) if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for assistance

under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided

therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of

the United States.

(c) Nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

Payment to States

Sec. 3. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing

October 1, 1960—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter as old-age assistance under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of

remedial care or the cost thereof) —

(A) ³/₃₇ of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of \$37 multiplied by the total number of recipients of old-age assistance for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received old-age assistance in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as old-age assistance in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i) (I) the Federal percentage (as defined in section 1101(a)(8))¹⁰ of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of recipients of old-age assistance for such month, plus (II) 15 per centum of the total expended during such month as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of \$15 multiplied by the total number of recipients of old-age assistance for such month, or

(ii) (I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of \$52

¹⁰ See p. 234, this volume.

multiplied by the total number of such recipients of oldage assistance for such month, or (b) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of \$37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as old-age assistance under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of such recipients of old-age assistance for such month; ¹¹

(2) in the case of Puerto Rico, the Virgin Islands, and Guam,

an amount equal to—

(A) one-half of the total of the sums expended during such quarter as old-age assistance under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of old-age assistance for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of \$45 multiplied by the total number of such recipients of old-age assistance for such month, or (II) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of \$37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as oldage assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of \$7.50 multiplied by the total number of such recipients of old-age assistance for such month:

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 6(c)) of the total

[&]quot;Sec. 9 of the Act of April 19, 1950, provides as follows:
"Sec. 9. Beginning with the quarter commencing July 1, 1950, the Secretary of the Treasury shall pay quarterly to each State (from sums made available for making payments to the States under sections 3(a), 403(a), and 1003(a) of the Social Security Act) an amount, in addition to the amounts prescribed to be paid to such State under such sections, equal to 80 per centum of the total amounts of contributions by the State toward expenditures during the preceding quarter by the State, under the State plans approved under the Social Security Act for old-age assistance, aid to dependent children, and aid to the needy blind, to Navajo and Hopi Indians residing within the boundaries of the State on reservations or on allotted or trust lands, with respect to whom payments are made to the State by the United States under sections 3(a), 403(a) and 1003(a), respectively, of the Social Security Act, not counting so much of such expenditure to any individual for any month as exceeds the limitations prescribed in such sections."

amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care

or the cost thereof); and

(4) in the case of any State whose State plan approved under section 2 meets the requirements of subsection (c) (1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are

for—

(i) services which are prescribed pursuant to subsection (c) (1) and are provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan to help them attain or retain capability for self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such

applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivi-

sion; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such assistance; plus

(C) one-half of the remainder of such expenditures. The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a

¹⁹ P.L. 90-248, sec. 212(a), inserted "except to the extent specified by the Secretary,". Effective January 1, 1968.

State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act, are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if

provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such state or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approve under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and pro-

cedures as may be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 2 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.¹³

(b) The method of computing and paying such amounts shall be as

follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary may find necessary.

¹³ See secs. 1108, 1118, and 1121, title XI, pp. 238 and 244-246, this volume,

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: Provided, That any part of the amount recovered from the estate of a decreased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service ¹⁴ of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Edu-

cation, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (4) of subsection (a), its State plan approved under section 2 must provide that the State agency shall make available to applicants for recipients of old-age assistance under such State plan at least those services to help them attain or retain capability for self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administra-

tion of such plan, that—

(A) the provision has been so changed that it no longer com-

plies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to com-

ply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) but shall instead be made, subject to

¹⁴ The Division of Disbursement was consolidated in the Fiscal Service of the Treasury Department by Reorganization Plan No. III, sec. 1(a), effective June 30, 1940 (54 Stat. 1231).

the other provisions of this title, under paragraph (5) of such sub-

section.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases shall be paid only to the extent that the State make a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

Operation of State Plans 15

Sec. 4. In the case of any State plan which has been approved under this title by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan finds-

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a

substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2(a)

to be included in the plan; the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) 16 until the Secretary is satisfied that such prohibited requirement is no longer imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).17

See sec. 1116, title XI. p. 243, this volume.
 P.L. 90-248, sec. 245(1), inserted the parenthetical clause.
 P.L. 90-248, sec. 245(2), substituted this sentence in lieu of "Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to

Administration

Sec. 5. [Executed. Authorized appropriation for administrative expenses of the Social Security Board under this title for the fiscal year ending June 30, 1936.]

Definitions

Sec. 6. (a) For the purposes of this title, the term "old-age assistance" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are sixty-five years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 2 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible,

his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it apears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual

with respect to whom it is made.

(b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals sixty-five years of age or older who are not recipients of old-age assistance (except, for any month, for recipients of old-age assistance who are admitted to or discharged from a medical institution during

such month) but whose income and resources are insufficient to meet all of such cost-

> (1) inpatient hospital services; (2) skilled nursing-home services;

(3) physicians' services;

(4) outpatient hospital or clinic services;

(5) home health care services; (6) private duty nursing services;

(7) physical therapy and related services;

(8) dental services;(9) laboratory and X-ray services;

(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices:

(11) diagnostic, screening, and preventive services; and

(12) any other medical care or remedial care recognized under

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public

institution (except as a patient in a medical institution).

(c) For purposes of this title, the term "Federal medical percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (i) the Federal medical percentage shall in no case be less than 50 per centum or more than 80 per centum, and (ii) the Federal medical percentage for Puerto Rico, the Virgin Islands, and Guam shall be 50 per centum. The Federal medical percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a) (8) 18 (other than the proviso at the end thereof); except that the Secretary shall, as soon as possible after enactment of the Social Security Amendments of 1960, determine and promulgate the Federal medical percentage for each State-

(1) for the period beginning October 1, 1960, and ending with the close of June 30, 1961, which promulgation shall be based on the same data with respect to per capita income as the data used by the Secretary in promulgating the Federal percentage (under section 1101(a)(8)) for such State for the fiscal year ending June 30, 1961 (which promulgation of the Federal medical percentage

shall be conclusive for such period), and

(2) for the period beginning July 1, 1961, and ending with the close of June 30, 1963, which promulgation shall be based on the same data with respect to per capita income as the data used by the Secretary in promulgating the Federal percentage (under section 1101(a)(8)) for such State for such period (which promulgation of the Federal medical percentage shall be conclusive for such period).

¹⁸ Title XI of the Social Security Act, p. 233, this volume,

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†Title II is administered by the Social Security Administration, Department of Health, Education, and Welfare. Title II of the Social Security Act appears in the U.S. Code as secs. 401–429, subchapter II, Title 42.

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Federal Old-Age and Survivors Insurance Trust Fund and Federal Disability Insurance Trust Fund

Section 201. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is author-

ized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939 (and covered into the Treasury) which are deposited into the Treasury by collectors of internal

revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before

January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code with respect to wages (as defined in section 1426 of such Code), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954 with respect to wages (as defined in section 3121 of such Code) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954 after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21 (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare 3 on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section: and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939, with respect to self-employment income (as defined in section 481 of such Code), and by chapter 2 (other than section 1401(b))⁴ of the Internal Revenue Code of 1954 with respect to self-employment income (as defined in section 1402 of such Code) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury, or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the

¹ See p. 403, vol. I.

² For deposits in Trust Fund on account of taxes on remuneration considered wages pursuant to agreements entered into by domestic corporations with respect to their foreign subsidiaries, see sec. 3121(1)(6) of the Internal Revenue Code of 1954, p. 420, vol. I.

⁸ Formerly the (Federal Security) Administrator. See "Administration of the Social Security Act" under Preface, p. V.

⁴ See p. 389, vol. I.

Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns, less the amounts specified in clause (2) of sub-

section (b) of this section.

The amounts appropriated by clauses (3) and (4) shall be transferred from time to time from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred from time to time from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection.

(b) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equiva-

lent to 100 per centum of—

(1) (A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 6 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, and (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and so reported, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2) (A) % of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 10 and 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, and (C) 0.7125 of 1 per centum of the

⁵ See p. 403, vol. I.

^{**}See p. 309, vol. 1.

**O.L. 90-248, sec. 110(a)(2), deleted "1954, and" and inserted "1954, (B)".

**P.L. 90-248, sec. 110(a)(3), inserted "and before January 1, 1968".

**S.L. 90-248, sec. 110(a)(4), inserted "and (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and so reported".

**See p. 390, vol. I.

**O.P.L. 90-248, sec. 110(b)(2), deleted "1966" and inserted "1966, (B)".

amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

(c) With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this title called the "Trust Funds") there is hereby created a body to be known as the Board of Trustees of the Trust Funds (hereinafter in this title called the "Board of Trustees") which Board of Trustees shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this title called the "Managing Trustee"). The Commissioner of Social Security shall serve as Secretary of the Board of Trustees. Such Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—
(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April 12 of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the

Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the

way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) above shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such report shall also include an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. 13 Such report shall be printed as a House document of the session of the Congress to which the report is made.

¹¹ P.L. 90-248, sec. 110(b)(3), inserted "and before January 1, 1968, and (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967".

¹² P.L. 90-248, sec. 169(a), deleted "March" and inserted "April".

¹³ P.L. 90-248, sec. 169(b), added this sentence.

(d) It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interestbearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Any obligation acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt

obligations may be redeemed at par plus accrued interest.

(f) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, re-

spectively.

(g) (1) (A) There are authorized to be made available for expenditure, out of any or all of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII), ¹⁴ such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title and title XVIII for which the Secretary of Health, Education, and Welfare is responsible. During each fiscal year or after the close of such fiscal year (or at both times), the Secretary of Health, Education, and Welfare shall analyze the costs of administration of this title and title XVIII during the appropriate part or all of such fiscal year in order to determine the portion of such costs which should be borne by each of the Trust Funds and shall certify to the Managing Trustee the amount, if any, which should be transferred among such Trust Funds in order to assure that each of the Trust Funds bears its proper

¹⁴ See pp. 286 and 299, vol. I.

share of the costs incurred during such fiscal year for the part of the administration of this title and title XVIII for which the Secretary of Health, Education, and Welfare is responsible. The Managing Trustee is authorized and directed to transfer any such amount (determined under the preceding sentence) among such Trust Funds in

accordance with any certification so made.

(B) The Managing Trustee is directed to pay from the Trust Funds into the Treasury the amounts estimated by him which will be expended, out of moneys appropriated from the general funds in the Treasury, during each calendar quarter by the Treasury Department for the part of the administration of this title and title XVIII for which the Treasury Department is responsible and for the administration of chapters 2 and 21 15 of the Internal Revenue Code of 1954. Such payments shall be covered into the Treasury as repayment to the account for reimbursement of expenses incurred in connection with such administration of this title and title XVIII and chapters 2 and

21 of the Internal Revenue Code of 1954.16

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 17 with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939 and section 3121 of the Internal Revenue Code of 1954)¹⁸ paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939 and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee

in future payments.

(h) Benefit payments required to be made under section 223, and benefit payments required to be made under subsection (b), (c), or (d) of section 202 to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to dis-

See pp. 389 and 399, vol. I.
 See pp. 389 and 399, vol. I.
 See p. 459, vol. I.
 See p. 403, vol. I.

ability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this title (other than section 226) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

Old-Age and Survivors Insurance Benefit Payments

Old-Age Insurance Benefits

Sec. 202. (a) Every individual who—

(1) is a fully insured individual (as defined in section 214(a)),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding

the month in which he attained the age of 65,

shall be entitled to an old-age insurance benefit for each month, beginning with the first month after August 1950 in which such individual becomes so entitled to such insurance benefits and ending with the month preceding the month in which he dies. Except as provided in subsection (q), such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 215(a)) for such month.

Wife's Insurance Benefits

(b) (1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual.

(C) in the case of a divorced wife, is not married,

(D) in the case of a divorced wife, was receiving at least onehalf of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or was receiving substantial contributions from such individual (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from such individual—

(i) if he had a period of disability which did not end before the month in which he became entitled to old-age or disability insurance benefits, at the beginning of such period or at the

time he becomes entitled to such benefits, or

(ii) if he did not have such a period of disability, at the

time he became entitled to old-age insurance benefits, and (E) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with the first month in which she be-

comes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—

(F) she dies,(G) such individual dies,

(H) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 20 years immediately before the date the divorce became effective,

(I) in the case of a divorced wife, she marries a person other

than such individual,

(J) in the case of a wife who has not attained age 62, no child

of such individual is entitled to a child's insurance benefit,

(K) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(L) such individual is not entitled to disability insurance bene-

fits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsection (q), such wife's insurance benefit for each month shall be equal to whichever of the following is the smaller: (A) one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month, or (B) \$105.19

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (f) or

(h) of this section, or

(B) an individual who has attained the age of 18 and is entitled

to benefits under subsection (d),

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

Husband's Insurance Benefits

(c) (1) The husband (as defined in section 216(f)) of an individual 20 entitled to old-age or disability insurance benefits, if such husband-

(A) has filed application for husband's insurance benefits,

(B) has attained age 62,

¹⁹ P.L. 90-248, sec. 103(a), amended section 202(b) (2). Applies with respect to monthly benefits under title II of the Social Security Act for months after January 1968. Prior to such amendment, this section read as follows:

"Except as provided in subsection (q), such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month."

²⁰ P.L. 90-248, sec. 157(a) (1), deleted "a currently insured individual (as defined in section 214(b))" and inserted "an individual". Applicable with respect to monthly benefits payable under title II of the Social Security Act for months after January 1968, but only on the basis of applications filed in or after January 1968.

(C) was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secre-

tarv.21 from such individual-

(i) if she had a period of disability which did not end prior to the month in which she became entitled to old-age or disability insurance benefits, at the beginning of such period or at the time she became entitled to such benefits, or

(ii) if she did not have such a period of disability, at the

time she became entitled to such benefits,

and filed proof of such support within two years after the month in which she filed application with respect to such period of disability or after the month in which she became entitled to such benefits, as the case may be, or, if she did not have such a period, two years after the month in which she became entitled to such benefits,22 and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the

primary insurance amount of his wife,

shall be entitled to a husband's insurance benefit for each month, beginning with the first month after August 1950 in which he becomes so entitled to such insurance benefits and ending with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, or he becomes entitled to an old-age or disability insurance benefit, based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) The provisions of subparagraph (C) of paragraph (1)²³ shall (subject to subsection (s)) not be applicable in the case of any hus-

band who-

(A) in the month prior to the month of his marriage to such individual was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h);

(B) in the month prior to the month of his marriage to such individual had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under

subsection (d); or

(C) in the month prior to the month of his marriage to such individual he was entitled to, or on application therefor and attainment of the required age (if any) would have been entitled to, a widower's, child's (after attainment of age 18), or parent's

Regulations of the Secretary appear in chapter III of title 20 of the Code of Federal

^{**}Regulations of the Secretary appear in chapter III of title 20 of the Code of Federal Regulations.

**2*P.L. 90-248, sec. 157(c), provides in effect that the requirement of sec. 202(c) (1) (C) (relating to the time within which proof of support must be filed) shall not apply in the case of any husband who would not be entitled to husband's insurance benefits except for the enactment of sec. 157 of P.L. 90-248 (which eliminated the requirement that the individual upon whose earnings record husband's insurance benefits are claimed must be currently insured) if such proof of support is filed within 2 years after February 1968.

**3*P.L. 90-248, sec. 157(a)(2), deleted "The requirement in paragraph (1) that the individual entitled to old-age or disability insurance benefits be a currently insured individual, and the provisions of subparagraph (C) of such paragraph, and inserted "The provisions of subparagraph (C) of paragraph (1)". Applicable as indicated in footnote 20, this title.

insurance annuity under section 5 of the Railroad Retirement

Act of 1937, as amended.24

(3) Except as provided in subsection (q), such husband's insurance benefit for each month shall be equal to whichever of the following is the smaller: (A) one-half of the primary insurance amount of his wife for such month, or (B) \$105.25

Child's Insurance Benefits

(d) (1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual if such child-

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time student and had not attained the age of 22, or (ii) is under a disability (as defined in section 223(d)26) which began before he attained the age of eighteen, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application

was filed,

(ii) if such individual has died, at the time of such death, or (iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month

preceding whichever of the following first occurs-

(D) the month in which such child dies, marries, or is adopted (except for adoption by a stepparent, grandparent, aunt, uncle, brother, or sister subsequent to the death of such fully or currently insured individual),

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time student during any part of such month,

(F) if such child was not under a disability (as so defined) at

the time he attained the age of 18, the earlier of—

²⁴ See p. 875, vol. II.

²⁵ P.L. 90-248, sec. 103(b), amended section 202(c)(3) in its entirety. Applicable with respect to monthly benefits under title II of the Act for months after January 1968. Prior to such amendment, this section read as follows:

"Except as provided in subsection (q), such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife for such month."

²⁶ P.L. 90-248, sec. 158(c)(1), deleted "section 223(c)" and inserted "section 223(d)".

Effective with respect to applications for disability insurance benefits under section 223 of the Act, and for disability determinations under section 216(i) of such Act, filed—(1) in or after January 1968, or (2) before January 1968 if the applicant has not deed before such month and if—(A) notice of the final decision of the Secretary of Health, Education, and Welfare has not been given to the applicant before such month: or (B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month.

(i) the first month during no part of which he is a full-time student, or

(ii) the month in which he attains the age of 22, or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-

time student, or

(ii) the month in which he attains the age of 22.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age in-

surance benefits or unless he dies in such month.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother 27 at the time specified in paragraph (1) (C) unless, at such time, such individual was not living

with or contributing to the support of such child and-

(A) such child is neither the legitimate nor adopted child of

such individual, or

(B) such child has been adopted by some other individual. For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall 28 be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother 29 at the time specified in paragraph (1) (C) if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother. 30

TP.L. 90-248, sec. 151(a)(1), inserted "or his mother or adopting mother". Applies with respect to monthly benefits payable under title II of the Act (and annuities accruing under the Railroad Retirement Act of 1937) for months after January 1968, but only on the basis of applications filed in or after January 1968.

P.L. 90-248, sec. 151(a)(2), deleted "if such individual is the child's father,". Applicable as indicated in footnote 27, this title.

P.L. 90-248, sec. 151(b), inserted "or stepmother". Applicable as indicated in footnote 27, this title.

P.L. 90-248, sec. 151(c), deleted paragraph (5), and redesignated paragraphs (6) through (10) as paragraphs (5) through (9) respectively. Applicable as indicated in footnote 27, this title. Prior to such amendment, paragraph (5) read as follows:

"A child shall be deemed dependent upon his natural or adopting mother at the time specified in paragraph (1)(C) if such mother or adopting mother was a currently insured individual. A child shall also be deemed dependent upon his natural or adopting mother, or upon his stepmother, at the time specified in paragraph (1)(C) if, at such time, (A) she was living with or contributing to the support of such child, and (B) either (i) such child was neither living with nor receiving contributions from his father or adopting father, or (ii) such child was receiving at least one-half of his support from her."

(5)³¹ In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (e), (f), (g), or (h) of this section or under section 223 (a), or

(B) another individual who has attained the age of eighteen

and is entitled to benefits under this subsection, such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under section 223(a) or this subsection, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or this subsection unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(6)³² A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he is a full-time student and has not attained the age of 22 if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs: The first month during no part of which he is a full-time student, the month in which he attains the age of 22, or the first month in which an event specified in paragraph (1)(D) occurs.

(7) 33 For the purposes of this subsection—

(A) A "full-time student" is an individual who is in full-time attendance as a student at an educational institution, as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the institutions involved, except that no individual shall be considered a "full-time student" if he is paid by his employer while attending an educational institution at the request, or pursuant to a requirement, of his employer.

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time student during any period of nonattendance at an educational institution at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an educational institution immediately following such period. An individual who does not meet the requirement of clause (ii) with re-

<sup>See footnote 30, this title.
See footnote 30, this title.
See footnote 30, this title.
title.</sup>

spect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an educational institution immediately fol-

lowing such period.

(C) An "educational institution" is (i) a school or college or university operated or directly supported by the United States, or by any State or local government or political subdivision thereof, or (ii) a school or college or university which has been approved by a State or accredited by a State-recognized or nationally-recognized accrediting agency or body, or (iii) a nonaccredited school or college or university whose credits are accepted, on transfer, by not less than three institutions which are so accredited, for credit on the same basis as if transferred from an institution so accredited.

 $(8)^{34}$ In the case of—

(A) an individual entitled to disability insurance benefits, or (B) an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless

such child-

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual most recently became entitled to disability

insurance benefits, but only if—

(i) proceedings for such adoption of the child had been instituted by such individual in or before the month in which began the period of disability of such individual which still exists at the time of such adoption (or, if such child was adopted by such individual after such individual attained age 65, the period of disability of such individual which existed in the month preceding the month in which he attained age 65), or

(ii) such adopted child was living with such individual

in such month; or 35

(E) was legally adopted by such individual—

(i) in an adoption which took place under the supervision of a public or private child-placement agency,

(ii) in an adoption decreed by a court of competent juris-

diction within the United States,

(iii) on a date immediately preceding which such individual had continuously resided for not less than one year within the United States;

³⁴ See footnote 30, this title. ³⁵ P.L. 90-248, sec. 112(a)(1), deleted the period at the end of subparagraph (D) and inserted "; or". Applies with respect to monthly benefits under title II of the Social Security Act for months after January 1968, but only on the basis of applications filed after January 2, 1968.

(iv) at a time prior to the attainment of age 18 by such

child.36

(9) 37 If an individual entitled to old-age insurance benefits (but not an individual included under paragraph (8)) 38 adopts a child after such individual becomes entitled to such benefits, such child shall be deemed not to meet the requirements of clause (i) of paragraph (1) (C) unless such child-

(A) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(B) was legally adopted by such individual before the end of the 24-month period beginning with the month after the month in which such individual became entitled to old-age insurance benefits, but only if—

(i) such child had been receiving at least one-half of his support from such individual for the year before such individual filed his application for old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, for

the year before such period of disability began, and

(ii) either proceedings for such adoption of the child had been instituted by such individual in or before the month in which the individual filed his application for old-age insurance benefits or such adopted child was living with such individual in such month.

Widow's Insurance Benefits

(e) (1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B) (i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified

in paragraph (5),39

(C) (i) has filed application for widow's insurance benefits, or was entitled, after attainment of age 62, to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died,

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained age 62,

(D) in the case of a surviving divorced wife who was not entitled to wife's insurance benefits on the basis of the wages and

³⁸ P.L. 90-248, sec. 112(a)(2), added new subparagraph (E). Applicable as indicated in footnote 35, this title.

³⁷ See footnote 30, this title.

³⁸ P.L. 90-248, sec. 151(d)(1), deleted "under paragraph (9)" and inserted "under paragraph (8)". Applicable as indicated in footnote 27, of this title.

³⁹ P.L. 90-248, sec. 104(a)(1), amended subparagraph (B) in its entirety. Applicable with respect to monthly benefits under title II for and after the month of February 1968, but only on the basis of an application filed in or after January 1968. Prior to such amendment, this subparagraph read as follows: "has attained age 60,".

self-employment income of such individual for the month preceding the month in which he died, was receiving at least one-half of her support, as determined in accordance with regulations prescribed by the Secretary, from such individual, or was receiving substantial contributions from such individual (pursuant to a written agreement) or there was in effect a court order for substantial contributions to her support from such individual—

(i) at the time of his death (or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time

of his death), or

(ii) at the time he became entitled to old-age insurance benefits or disability insurance benefits (or, if such individual had a period of disability which did not end before the month in which he became entitled to such benefits, at the time such period began or at the time he became entitled to such benefits), and

(E) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual, shall be entitled to a widow's insurance benefit for each month, begin-

ning with-

(F) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(G) if she satisfies subparagraph (B) by reason of clause (ii)

thereof-

(i) the first month after her waiting period (as defined in paragraph (6)) in which she becomes so entitled to such in-

surance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual, or, if she became entitled to such benefits before she attained age 60, the third month following the month in which her disability ceases (unless she attains age 62 on or before the last day of such third month).40

(2) Except as provided in subsection (q) and paragraph (4) of this subsection, such widow's insurance benefit for each month shall be

^{**}OP.L. 90-248, sec. 104(a) (2), deleted:

"shall be entitled to a widow's insurance benefit for each month, beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual", inserted "shall be entitled to a widow's insurance benefit for each month, beginning with —", added new subparagraphs (F) and (G), and revised the provisions following them. Applicable as indicated in footnote 39, of this title.

equal to 821/2 percent of the primary insurance amount of such deceased individual.

(3) In the case of a widow or surviving divorced wife who mar-

ries-

(A) an individual entitled to benefits under subsection (f) or (h) of this section, or

(B) an individual who has attained the age of eighteen and is

entitled to benefits under subsection (d),

such widow's or surviving divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason

of his death.

(4) If a widow, after attaining the age of 60, marries an individual (other than one described in subparagraph (A) or (B) of paragraph (3)), such marriage shall, for purposes of paragraph (1), be deemed not to have occurred; except that, notwithstanding the provisions of paragraph (2) and subsection (q), such widow's insurance benefit for the month in which such marriage occurs and each month thereafter prior to the month in which the husband dies or such marriage is otherwise terminated, shall be equal to whichever of the following is the smaller: (A) one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based, or (B) \$105; 41

(5) The period referred to in paragraph (1) (B) (ii), in the case of any widow or surviving divorced wife, is the period beginning with

whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based,

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment

income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment

income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6) The waiting period referred to in paragraph (1)(G), in the case of any widow or surviving divorced wife, is the earliest period of

six consecutive calendar months—

(A) throughout which she has been under a disability, and

⁴¹ P.L. 90-248, sec. 103(c), inserted "whichever of the following is the smaller: (A) one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based, or (B) \$105" in lieu of "50 per centum of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based", applicable as indicated in footnote 19, of this title.

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the eighteenth month before the month in which her application is filed, or (ii) the first day of the sixth month before the month in which the period specified in paragraph (5) begins.⁴²

Widower's Insurance Benefits

(f) (1) The widower (as defined in section 216(g) of an individual who died a fully 43 insured individual, if such widower—

(A) has not remarried,

(B) (i) has attained age 62, or (ii) has attained age 50 but has not attained age 62 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (6), 44

(C) has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the

month preceding the month in which she died,

(D) (i) was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary, 45 from such individual at the time of her death or, if such individual had a period of disability which did not end prior to the month in which she died, at the time such period began or at the time of her death, and filed proof of such support within two years after the date of such death, or, if she had such a period of disability, within two years after the month in which she filed application with respect to such period of disability or two years after the date of such death, as the case may be, or (ii) was receiving at least one-half of his support, as determined in accordance with regulations prescribed by the Secretary 46 from such individual 47 at the time she became entitled to old-age or disability insurance benefits or, if such individual had a period of disability which did not end prior to the month in which she became so entitled, at the time such period began or at the time she became entitled to such benefits, and filed proof of such support within two years after the month in which she became entitled to such benefits, or, if she had such a period of disability, within two years after the month in which she filed application with respect to such period of disability or two years after the month in which she became entitled to such benefits, as the case may be, 48

Regulations.

⁴² P.L. 90-248, sec. 104(a)(3), added new subparagraphs (5) and (6). Applicable as indicated in footnote 39, of this title.

⁴³ P.L. 90-248, sec. 157(b)(1)(A), deleted "and currently". Applicable as indicated in footnote 20, of this title.

⁴⁴ P.L. 90-248, sec. 104(b)(1), amended subparagraph (B) in its entirety. Applicable as indicated in footnote 33, of this title. Prior to such amendment, such subparagraph read as follows: "has attained age 62.".

⁴⁵ Regulations of the Secretary appear in chapter III of title 20 of the Code of Federal Regulations.

Regulations.

See footnote 45, this title.

P.L. 90-248, sec. 157(b) (1) (B), deleted "and she was a currently insured individual".

Applicable as indicated in footnote 20, of this title.

P.L. 90-248, sec. 157(c), provides in effect that the requirement of sec. 202(f) (1) (D) (relating to the time within which proof of support must be filed) shall not apply in the case of any widower who would not be entitled to widower's insurance benefits except for enactment of sec. 157 of P.L. 90-248 (which eliminated the requirement that the individual upon whose earnings record widower's insurance benefits are claimed must be currently insured) if such proof of support is filed within 2 years after February 1968.

(E) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 821/2 percent of the primary insurance amount of his deceased wife,

shall be entitled to a widower's insurance benefit for each month,

beginning with-

(F) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(G) if he satisfies subparagraph (B) by reason of clause (ii)

thereof-

(i) the first month after his waiting period (as defined in paragraph (7)) in which he becomes so entitled to such in-

surance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (6) and (II) after the month in which a previous entitlement to such benefits on such basis terminated.

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an oldage insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of his deceased wife, or the third month following the month in which his disability ceases (unless he attains age

62 on or before the last day of such third month).49

(2) The provisions of subparagraph (D) of paragraph (1) 50 shall (subject to subsection (s)) not be applicable in the case of any individual who-

(A) in the month prior to the month of his marriage to such individual was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to,

benefits under this subsection or subsection (h);

(B) in the month prior to the month of his marriage to such individual had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under

subsection (d); or

(C) in the month prior to the month of his marriage to such individual he was entitled to, or on application therefor and attainment of the required age (if any), would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

(3) Except as provided in subsection (q) 51 and paragraph (5), such widower's insurance benefit for each month shall be equal to 821/2 percent of the primary insurance amount of his deceased wife.

(4) In the case of a widower who remarries—

(A) an individual entitled to benefits under subsection (b),

(e), (g), or (h), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such widower's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to sub-

section (s), not be terminated by reason of such marriage.

(5) If a widower, after attaining the age of 62, marries an individual (other than one described in subparagraph (A) or (B) of paragraph (4)), such marriage shall, for purposes of paragraph (1), be deemed not to have occurred; except that, notwithstanding the provisions of paragraph (3) and subsection (q), such widower's insurance benefit for the month in which such marriage occurs and each month thereafter prior to the month in which the wife dies or such marriage is otherwise terminated, shall be equal to whichever of the following is the smaller: (A) one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based, or (B) \$105.52

(6) The period referred to in paragraph (1) (B) (ii), in the case of any widower, is the period beginning with whichever of the follow-

ing is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based, or

(B) the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 62, or, if earlier, with the close of the eighty-fourth month following

the month with which such period began.

(7) The waiting period referred to in paragraph (1)(G), in the case of any widower, is the earliest period of six consecutive calendar months-

(A) throughout which he has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the eighteenth month before the month in which his application is filed, or (ii) the first day of the sixth month before the month in which the period specified in paragraph (6) begins.⁵³

⁵¹ P.L. 90–248, sec. 104(b)(3), inserted "subsection (q) and". Applicable as indicated in footnote 39, of this title.

⁵² P.L. 90–248, sec. 103(d), deleted "50 per centum of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based" and inserted "whichever of the following is the smaller: (A) one-half of the primary insurance amount of the deceased individual on whose wages and self-employment income such benefit is based, or (B) \$105." Applicable as indicated in footnote 19, of this title.

⁵³ P.L. 90–248, sec. 104(b)(4), added subparagraphs (6) and (7). Applicable as indicated in footnote 39, of this title.

Mother's Insurance Benefits

(g) (1) The widow and every surviving divorced mother (as defined in section 216(d)) of an individual who died a fully or currently insured individual, if such widow or surviving divorced mother—

(A) is not married,

(B) is not entitled to a widow's insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths

of the primary insurance amount of such individual,

(D) has filed application for mother's insurance benefits, or was entitled to wife's insurance benefits on the basis of the wages and self-employment income of such individual for the month preceding the month in which he died,

(E) at the time of filing such application has in her care a child

of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced mother—

(i) at the time of such individual's death (or, if such individual had a period of disability which did not end before the month in which he died, at the time such period began or at the time of such death)—

 she was receiving at least one-half of her support, as determined in accordance with regulations prescribed

by the Secretary, from such individual, or

(II) she was receiving substantial contributions from such individual (pursuant to a written agreement), or

(III) there was a court order for substantial contributions to her support from such individual,

(ii) the child referred to in subparagraph (E) is her son,

daughter, or legally adopted child, and

(iii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income.

shall (subject to subsection (s)) be entitled to a mother's insurance benefit for each month, beginning with the first month after August 1950 in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such widow or surviving divorced mother becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, she becomes entitled to a widow's insurance benefit, she remarries, or she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced mother, with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced mother is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Such mother's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased

individual.

(3) In the case of a widow or surviving divorced mother who marries—

(A) an individual entitled to benefits under subsection (a),

(f), or (h), or under section 223(a), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

the entitlement of such widow or surviving divorced mother to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under section 223(a) or subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or subsection (d) of this section unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

Parent's Insurance Benefits

(h) (1) Every parent (as defined in this subsection) of an individual who died a fully insured individual if such parent—

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such

primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits, shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2) (A) (or 75 percent of such primary insurance amount in any other case).

(2) (A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-

employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed.

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 203(a)) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he at-

tained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or

subsection (b), (e), (f), or (g), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage; except that, in the case of such a marriage to a male individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death.

Lump-Sum Death Payments

(i) Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount, or an amount equal to \$255, whichever is the smaller, shall be paid in a lump sum to the per-

son, if any, determined by the Secretary to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) if all or part of the burial expenses of such insured individual which are incurred by or through a funeral home or funeral homes remains unpaid, to such funeral home or funeral homes to the extent of such unpaid expenses, but only if (A) any person who assumed the responsibility for the payment of all or any part of such burial expenses files an application, prior to the expiration of two years after the date of death of such insured individual, requesting that such payment be made to such funeral home or funeral homes, or (B) at least 90 days have elapsed after the date of death of such insured individual and prior to the expiration of such 90 days no person has assumed responsibility for the payment of any such burial expenses;

(2) if all of the burial expenses of such insured individual which were incurred by or through a funeral home or funeral homes have been paid (including payments made under clause (1)), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid such

burial expenses; or

(3) if any part of the amount payable under this subsection remains after payments have been made pursuant to clauses (1) and (2), to any person or persons, equitably entitled thereto, to the extent and in the proportions that he or they shall have paid other expenses in connection with the burial of such insured individual, in the following order of priority: (A) expenses of opening and closing the grave of such insured individual, (B) expenses of providing the burial plot of such insured individual, and (C) any remaining expenses in connection with the burial of such insured individual.

No payment (except a payment authorized pursuant to clause (1) (A) of the preceding sentence) shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 210(1)(1) are applicable, and who is returned to any State or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

Application for Monthly Insurance Benefits

(j) (l) An individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to the end of the twelfth month immediately succeeding such month. Any benefit under this title for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Secretary has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application. If upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be

deemed to have been filed in such first month.

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

Simultaneous Entitlement to Benefits

(k) (1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) hereof, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been

filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employ-

ment income of both such insured individuals.

(2) (A) Any child who under the preceding provisions of this section is entitled for any month to more than one child's insurance benefit shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month, such benefit to be the one based on the wages and self-employment income of the insured

individual who has the greatest primary insurance amount.

(B) Any individual (other than an individual to whom subsections (e) (4) or (f) (5) applies) who, under the preceding provisions of this section and under the provisions of section 223, is entitled for any month to more than one monthly insurance benefit (other than old-age or disability insurance benefit) under this title shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph (B)) would otherwise be entitled for such months. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e) (4) or (f) (5) applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3) (A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q) and any reduction under section 203 (a), shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction

under such subsection (q)).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e) (4) or (f) (5) applies and to any other monthly insurance benefit under section 202 (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A), any reduction under subsection (q), and any reduction under section 203 (a), shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 203 (a).

(4) Any individual who, under this section and section 223, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this title shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such bene-

fits for such month.

Entitlement to Survivor Benefits Under Railroad Retirement Act

(1) If any person would be entitled, upon filing application therefor to an annuity under section 5 of the Railroad Retirement Act of 1937, or to a lump-sum payment under subsection (f) (1) of such section, 54 with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the

⁵⁴ See p. 875, vol. II.

month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

Minimum Survivor's or Dependent's Benefit

(m) In any case in which the benefit of any individual for any month under this section (other than subsection (a)) is, prior to reduction under subsection (k)(3) and subsection (q), less than the first figure in column IV of the table in section 215 (a) and no other individual is (without the application of section 202(j)(1) entitled to a benefit under this section for such month on the basis of the same wages and self-employment income, such benefit for such month shall, prior to reduction under such subsection (k)(3) and subsection (q), be increased to the first figure in column IV of the table in section 215(a).

Termination of Benefits Upon Deportation of Primary Beneficiary

(n) (1) If any individual is (after the date of enactment of this subsection) deported under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act,⁵⁵ then, notwithstanding any other provisions of this title—

(A) no monthly benefit under this section or section 223 shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Secretary is notified by the Attorney General that such individual has been so deported, and (ii) before the month in which such individual is thereafter lawfully admitted to the

United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies

(i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 203 (b), (c), and (d) of this Act shall not apply with respect to any such individual for any month for which no monthly benefit

may be paid to him by reason of this paragraph.

(2) As soon as practicable after the deportation of any individual under any of the paragraphs of section 241(a) of the Immigration and Nationality Act enumerated in paragraph (1) in this subsection, the Attorney General shall notify the Secretary of such deportation.

⁵⁵ See p. 825, vol. II.

Application for Benefits by Survivors of Members and Former Members of the Uniformed Services

(o) In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h) upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 3005 of Title 38, United States Code, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

Extension of Period for Filing Proof of Support and Applications for Lump-Sum Death Payment

(p) In any case in which there is a failure—

(1) to file proof of support under subparagraph (C) of subsection (c) (1), clause (i) or (ii) of subparagraph (D) of subsection (f) (1), or subparagraph (B) of subsection (h) (1), or under clause (B) of subsection (f) (1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i), or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such

subsection.

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

Reduction of Benefit Amounts for Certain Beneficiaries 56

(q) (1) If the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's 57 insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for each month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A) % of 1 percent of such amount if such benefit is an old-age, widow's or widower's 58 insurance benefit, or 25/36 of 1 percent of such amount if such benefit is a wife's or husband's insurance

benefit; multiplied by

(B) (i) the number of months in the reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

⁵⁶ P.L. 90-248, sec. 104(c)(1), added the new heading in place of "Reduction of Old-Age, Disability, Wife's, Husband's, or Widow's Insurance Benefit Amounts".

57 P.L. 90-248, sec. 104(c)(2), deleted "or widow's" and inserted "widow's, or widower's". Applicable as indicated in footnote 39, of this title.

58 P.L. 90-248, sec. 104(c)(3), deleted "or widow's" and inserted ", widow's, or widower's". Applicable as indicated in footnote 39, of this title.

(ii) the number of months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is for the month in which such individual attains retirement age or for any month thereafter.

A widow's or widower's insurance benefit reduced pursuant to the

preceding sentence shall be further reduced by—

(C) 43/198 of 1 percent of the amount of such benefit, multi-

plied by

(D) (i) the number of months in the additional reduction period for such benefit (determined under paragraph (6)), if such benefit is for a month before the month in which such individual attains retirement age, or

(ii) the number of months in the additional adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is for the month in which such individual attains retire-

ment age or for any month thereafter. 59

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained age 65 in the first month for which he most recently became entitled to a disability insurance benefit.

(3) (A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's 60 insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 61 (in the case of a widow's or widower's 62 insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was

first entitled for a month before he attains age 65), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's 63 insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any menth for which such individual is entitled to an oldage insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be

reduced by the sum of-

(i) the amount by which such old-age insurance benefit is

reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such oldage insurance benefit (before reduction under this subsection).

63 See footnote 60, this title.

^{**}Sep. L. 90-248, sec. 104(c)(4), amended section 202(q)(1) by adding at the end "A widow's * * * month thereafter". Applicable as indicated in footnote 39, of this title.

**Opp. L. 90-248, sec. 104(c)(5)(A), deleted "or widow's" and inserted "widow's, or widower's". Applicable as indicated in footnote 39, of this title.

**Opp. L. 90-248, sec. 104(c)(5)(C) deleted "60" and inserted "50". Applicable as indicated in footnote 39, of this title.

**Opp. L. 90-248, sec. 104(c)(5)(C) deleted "60" and inserted "50". Applicable as indicated in footnote 39, of this title.

**Opp. L. 90-248, sec. 104(c)(5)(B), deleted "a widow's" and inserted "a widow's or widower's". Applicable as indicated in footnote 39, of this title.

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's 64 insurance benefit shall be reduced by the sum of-

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph

applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's 65 insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's, husband's, widow's, or widower's 66 insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's 67 insurance benefit shall be reduced by the amount by which it would be reduced

under paragraph (1).

(E) If the first month for which an individual is entitled to an oldage insurance benefit (whether such first month occurs before, with, or after the month in which such individual attains the age of 65) is a month for which such individual is also (or would, but for subsection (e) (1) in the case of a widow or surviving divorced wife or subsection (f) (1) in the case of a widower, be) 68 entitled to a widow's or widower's 69 insurance benefit to which such individual was first entitled for a month before she or he 70 attained retirement age, then such old-age insurance benefit shall be reduced by whichever of the following is the larger:

the amount by which (but for this subparagraph) such old-age insurance benefit would have been reduced under para-

graph (1), or

(ii) the amount equal to the sum of the amount by which such widow's or widower's 71 insurance benefit was reduced for the month in which such individual attained retirement age and the amount by which such old-age insurance benefit would be reduced under paragraph (1) if it were equal to the excess of such old-age insurance benefit (before reduction under this subsection) over such widow's or widower's 72 insurance benefit (before reduction under this subsection).

(F) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs with or after the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e) (1)

⁶⁸ P.L. 90-248, sec. 104(c)(6), deleted "or widow's" and inserted "widow's, or widower's". Applicable as indicated in footnote 39, of this title.

68 See footnote 39, this title.

68 See footnote 39, this title.

67 P.L. 90-248, sec. 104(c)(7), deleted "or widow's" and inserted "widow's, or widower's". Applicable as indicated in footnote 39, of this title.

68 P.L. 90-248, sec. 104(c)(8)(A), deleted "or would, but for subsection (e)(1), be)" and inserted "(or would * * * widower, be)". Applicable as indicated in footnote 39, of this title.

of this time.

© P.L. 90-248, sec. 104(c)(8)(B), deleted "widow's" and inserted "widow's or widower's". Applicable as indicated in footnote 39, of this title.

70 P.L. 90-248, sec. 104(c)(8)(C), deleted "she" and inserted "she or he". Applicable as indicated in footnote 39, of this title.

71 See footnote 69, this title.

72 See footnote 69, this title.

in the case of a widow or surviving divorced wife or subsection (f) (1) in the case of a widower, be) 73 entitled to a widow's or widower's 74 insurance benefit to which such individual was first entitled for a month before she or he 75 attained retirement age, then such disability insurance benefit for each month shall be reduced by whichever of the following is larger:

(i) the amount by which (but for this subparagraph) such disability insurance benefit would have been reduced under para-

graph (2), or

(ii) the amount equal to the sum of the amount by which such widow's or widower's 76 insurance benefit was reduced for the month in which such individual attained retirement age and the amount by which such disability insurance benefit would be reduced under paragraph (2) if it were equal to the excess of such disability insurance benefit (before reduction under this subsection) over such widow's insurance benefit (before reduction un-

der this subsection).

(G) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs before the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e) (1) in the case of a widow or surviving divorced wife or subsection (f) (1) in the case of a widower, be) 77 entitled to a widow's or widower's 78 insurance benefit, then such disability insurance benefit for each month shall be reduced by the amount such widow's insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained age 62 in the first month for which she or he 79 most recently became entitled to a disability insurance benefit.

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and

self-employment income such benefit is based,

then the amount of the reduction of such benefit for each month shall be computed separately (under paragraph (1) or (3), whichever applies) for the portion of such benefit which constitutes such benefit before any increase described in subparagraph (B), and separately (under paragraph (1) or (3), whichever applies to the benefit being increased) for each such increase. For purposes of determining the amount of the reduction under paragraph (1) or (3) in any such increase, the reduction period and the adjusted reduction period shall

⁷³ P.L. 90-248, sec. 104(c)(9)(A), deleted "(or would, but for subsection (e)(1), be)" and inserted "(or would * * * widower, be)". Applicable as indicated in footnote 39,

and inserted "(or would without) be). Applicable as indicated in footnote 39, of this title.

72 P.L. 90-248, sec. 104(c) (9) (B), deleted "widow's" and inserted "widow's or widower's". Applicable as indicated in footnote 39, of this title.

75 P.L. 90-248, sec. 104(c) (9) (C), deleted "she" and inserted "she or he". Applicable as indicated in footnote 39, of this title.

75 See footnote 74, this title.

77 P.L. 90-248, sec. 104(c) (10) (\(\Delta\)), deleted "(or would, but for subsection (e) (1), be)" and inserted "(or would * * * widower, be)". Applicable as indicated in footnote 39, of this title.

this title. This title, widower's". Applicable as indicated in footnote 39, of this title.

To P.L. 90-248, sec. 104(c) (10) (B), deleted "widow's" and inserted "widow's or widower's". Applicable as indicated in footnote 39, of this title.

be determined as if such increase were a separate benefit to which such individual was entitled for and after the first month for which such increase is effective.

(5) (A) No wife's insurance benefit shall be reduced under this sub-

section-

(i) for any month before the first month for which there is in effect a certificate filed by her with the Secretary, in accordance with regulations prescribed by him, in which she elects to receive wife's insurance benefits reduced as provided in this subsection, or

(ii) for any month in which she has in her care (individually or jointly with the person on whose wages and self-employment income her wife's insurance benefit is based) a child of such person

entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A) (i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 203(c) (2))—

(i) for the month in which it is filed and for any month there-

after, and

(ii) for months, in the period designated by the woman filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed:

except that such certificate shall not be effective for any month before the month in which she attains age 62, nor shall it be effective for any

month to which subparagraph (A) (ii) applies.

(C) If a woman does not have in her care a child described in subparagraph (A) (ii) in the first month for which she is entitled to a wife's insurance benefit, and if such first month is a month before the month in which she attains age 65, she shall be deemed to have filed in such first month the certificate described in subparagraph (A) (i).

(D) No widow's insurance benefit for a month in which she has in her care a child of her deceased husband (or deceased former husband) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which she would have been entitled had she been entitled for such month to mother's insurance benefits on the basis of her deceased husband's (or deceased former husband's) wages and self-employment income.

(6) For the purposes of this subsection—

(A) the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(i) beginning—

(I) in the case of an old-age or husband's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit, or

(II) in the case of a wife's insurance benefit, with the first day of the first month for which a certificate de-

scribed in paragraph (5) (A) (i) is effective, or

(III) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(ii) ending with the last day of the month before the month in which such individual attains retirement age; and (B) the "additional reduction period" for an individual's wid-

ow's or widower's insurance benefit is the period—

(i) beginning with the first day of the first month for which such individual is entitled to such benefit, but only if such individual has not attained age 60 in such first month,

(ii) ending with the last day of the month before the

month in which such individual attains age 60.80

(7) For purposes of this subsection, the "adjusted reduction period" or "additional adjusted reduction period" s1 for an individual's old-age, wife's, husband's, widow's, or widower's 82 insurance benefit is the reduction period or additional reduction period (as the case may be) 83 prescribed by paragraph (6) for such benefit, excluding from such period-

(A) any month in which such benefit was subject to deductions

under section 203(b), 203(c)(1), 203(d)(1), or 222(b),

(B) in the case of wife's insurance benefits, any month in which she had in her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability,

(D) in the case of widow's insurance benefits, any month in which the reduction in the amount of such benefit was deter-

mined under paragraph (5) (D),

(E) in the case of widow's or widower's 84 insurance benefits, any month before the month in which she or he 85 attained retirement age for which she or he 86 was not entitled to such benefit because of the occurrence of an event that terminated her or his 87 entitlement to such benefits, and

as follows:

"For purposes of this subsection, the 'reduction period' for an individual's old-age, wife's, husband's, or widow's insurance benefit is the period—

⁸⁰ P.L. 90-248, sec. 104(c) (11) (A), amended section 202(q) (6) in its entirety. Applicable as indicated in footnote 39, of this title. Prior to such amendment, this section read

⁽i) in the case of an old-age, husband's, or widow's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit, or

the first day of the first month for which such individual is entitled to such benefit, or

(ii) in the case of a wife's insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, and (B) ending with the last day of the month before the month in which such individual attains retirement age."

31 P.L. 90-248, sec. 104(c)(12)(A), inserted "or 'additional adjusted reduction period'". Applicable as indicated in footnote 39, of this title.

32 P.L. 90-248, sec. 104(c)(12)(B), deleted "or widow's" and inserted "widow's, or widower's". Applicable as indicated in footnote 39, of this title.

33 P.L. 90-248, sec. 104(c)(12)(C), inserted "or additional reduction period (as the case may be)". Applicable as indicated in footnote 39, of this title.

44 P.L. 90-248, sec. 104(c)(12)(D), deleted "widow's" and inserted "widow's or widower's". Applicable as indicated in footnote 39, of this title.

55 P.L. 90-248, sec. 104(c)(12)(D), deleted "she" and inserted "she or he". Applicable as indicated in footnote 39, of this title.

56 P.L. 90-248, sec. 104(c)(12)(D), deleted "her" and inserted "her or his". Applicable as indicated in footnote 39, of this title.

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 203(a) and after application of section 215(g). If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of \$0.10, it shall be reduced to the next lower multiple of \$0.10.

(9) For purposes of this subsection, the term "retirement age" means age 65 with respect to an old-age, wife's, or husband's insurance benefit and age 62 with respect to a widow's or widower's 88 insurance

benefit.

Presumed Filing of Application by Individuals Eligible for Old-Age Insurance Benefits and for Wife's or Husband's Insurance Benefits

(r) (1) If the first month for which an individual is entitled to an old-age assistance benefit is a month before the month in which such individual attains age 65, and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) is a month before the month in which such individual attains age 65, and if such individual is eligible (but for section 202(k) (4)) for an old-age insurance benefit for such first month, such individual shall be deemed

to have filed an application for old-age insurance benefits—

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

Child Aged 18 or Over Attending School

(s) (1) For the purposes of subsections (b) (1), (g) (1), (q) (5), and (q) (7) of this section and paragraphs (2), (3), and (4) of section 203(c), a child who is entitled to child's insurance benefits under subsection (d) for any month, and who has attained the age of 18 but is not in such month under a disability (as defined in section 223(d)) 89 which began before he attained such age, shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) Subsection (f) (4), and so much of subsections (b) (3), (d) (5), 90 (e) (3), (g) (3), and (h) (4), of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability

^{**} P.L. 90-248, sec. 104(c)(13), deleted "widow's" and inserted "widow's or widower's". Applicable as indicated in footnote 39, of this title.

** P.L. 90-248, sec. 158 (c)(2), deleted "section 223(c)" and inserted "section 223(d)". For effective date see footnote 283, of this title.

** P.L. 90-248, sec. 151(d)(2), deleted "(d)(6)" and inserted "(d)(5)". Applicable as indicated in footnote 27, of this title.

(as defined in section 223(d)) 91 which began before such child attained the age of 18 or had been under such a disability in the third

month before the month in which such marriage occurred.

(3) Subsections (c) (2) (B) and (f) (2) (B) of this section, so much of subsections (b) (3), (d) (5), 92 (e) (3), (g) (3), and (h) (4) of this section as follows the semicolon, the last sentence of subsection (c) of section 203, subsection (f) (1) (C) of section 203, and subsections (b) (3) (B), (c) (6) (B), (f) (3) (B), and (g) (6) (B) of section 216 shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 223(d) 93 which began before such child attained the age of 18.

Suspension of Benefits of Aliens Who Are Outside the United States 94

(t) (1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Secretary finds, on the basis of information furnished to him by the Attorney General or information which otherwise comes to his attention, that such individual is outside the United

States, and

(B) prior to the first month thereafter for all of which such

individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.95

(2) Paragraph (1) shall not apply to any individual who is a citizen of a foreign country which the Secretary finds has in effect a social insurance or pension system which is of general application in such

country and under which-

(A) periodic benefits, or the actuarial equivalent thereof, are

paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) shall not apply in any case where its application would be contrary to any treaty obligation of the United States in

effect on the date of the enactment of this subsection.

⁹¹ See footnote 89, this title.
⁹² See footnote 90, this title.
⁹³ See footnote 89. this title.
⁹⁴ See P.L. 90-248, sec. 162 (c)(3), p. 520, vol. II, for provisions concerning restrictions on payment of benefits to which an alien was entitled on June 30, 1968. but which were then being withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123).
⁹⁵ P.L. 90-248, sec. 162(a)(1), added a new sentence "For purposes * * consecutive days," at the end of subparagraph (B). Applicable only with respect to six-month periods (within the meaning of section 202(t)(1)(A) of the Social Security Act) which begin after January 2, 1968.

(4) Paragraph (1) shall not apply to any benefit for any month if— (A) not less than forty of the quarters elapsing before such

month are quarters of coverage for the individual on whose wages

and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 210 (1) (2) and (3) as a member of a uniformed service (as defined in section 210(m)), or (ii) as the result of a disease or injury which the Administrator of Veterans' Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 210(1)(2)), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 210(1)(3)), as a member of a uniformed service (as defined in section 210(m)), if the Administrator determines that such individual was discharged or released from the period of such active duty or inactive duty training under conditions other than dishonorable, and if the Administrator certifies to the Secretary his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act which was treated as employment covered by this Act pursuant to the provisions of section 5(k) (l) of the Railroad Retirement Act; 96 except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department

under the first section of the Act of October 9, 1940 (31 U.S.C. 123).97 (5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1), of such benefit or any other benefit based on the wages and self-employment income of the indi-

⁹⁶ P.L. 90-248, sec. 162(b)(1)(A), deleted the period at the end of subparagraph (E) and inserted a semicolon.
⁹⁷ P.L. 90-248, sec. 162(b)(1)(B), inserted after and below subparagraph (E) "except that * * October 9, 1940 (31 U.S.C. 123)". Applicable only with respect to monthly benefits under title II of the Social Security Act for months beginning after June 30, 1968.

vidual on whose wages and self-employment income such monthly

benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10) 98 be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 203 shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this

subsection.

(8) The Attorney General shall certify to the Secretary such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Secretary to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Secretary in obtaining such other information as may be necessary to enable the Secretary to carry out the purposes of this subsection.

(9) No payments shall be made under part A of title XVIII with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such

benefits)

(10) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223, for any month beginning after June 30, 1968, to an individual who is not a citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123). 99 100

Conviction of Subversive Activities, etc.

(u) (1) If any individual is convicted of any offense (committed

after the date of the enactment of this subsection) under-

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or

(B) section 4, 112, or 113 of the Internal Security Act of 1950,

as amended,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 223 is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is

 $^{^{98}}$ P.L. 90-248, sec. 162(c)(2), deleted "by reason of paragraph (1)" and inserted "by reason of paragraph (1) or (10)". 99 P.L. 90-248, sec. 162(c)(1), added new paragraph (10). 100 See footnote 97, this title.

entitled to insurance benefits under part A of title XVIII for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar quarter in which such conviction occurs or in

any prior calendar quarter, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1), been imposed with respect to any individual, the Attorney General shall notify the Secretary of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

Waiver of Benefits

(v) Notwithstanding any other provisions of this title, in the case of any individual who files a waiver pursuant to section 1402(h) of the Internal Revenue Code of 1954 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this title to him, no payments shall be made on his behalf under part A of title XVIII, and no benefits or other payments under this title shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver; except that, if thereafter such individual's tax exemption under such section 1402(h) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this title and part A of title XVIII to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year.

Reduction of Insurance Benefits

Maximum Benefits

Sec. 203. (a) Whenever the total of monthly benefits to which individuals are entitled under sections 202 and 223 for a month on the basis of the wages and self-employment income of an insured individual is greater than the amount appearing in column V of the table in section 215(a) on the line on which appears in column IV such insured individual's primary insurance amount, such total of benefits shall be reduced to such amount; except that—

(1) when any of such individuals so entitled would (but for the provisions of section 202(k)(2)(A) be entitled to child's insurance benefits on the basis of the wages and self-employment income of one or more other insured individuals, such total of benefits shall not be reduced to less than the smaller of: (A) the sum of the maximum amounts of

benefits payable on the basis of the wages and self-employment income of all such insured individuals, or (B) the last figure in column V of

the table appearing in section 215(a), or

(2) when two or more persons were entitled (without the application of section 202(j)(1) and section 223(b)) to monthly benefits under section 202 or 223 for the month of February 1968 on the basis of the wages and self-employment income of such insured individual, such total of benefits for such month or any subsequent month shall not be reduced to less than the larger of—

(A) the amount determined under this subsection without re-

gard to this paragraph, or

(B) an amount equal to the sum of the amounts derived by multiplying the benefit amount determined under this title (including this subsection, but without the application of section 222(b), section 202(q), and subsections (b), (c), and (d) of this section), as in effect prior to February 1968, for each such person for February 1968, by 113 percent and raising each such increased amount, if it is not a multiple of \$0.10, to the next higher

multiple of \$0.10;

but in any such case (i) paragraph (1) of this subsection shall not be applied to such total of benefits after the application of subparagraph (B), and (ii) if section 202(k)(2)(A) was applicable in the case of any such benefits for the month of February 1968, and ceases to apply after such month, the provisions of subparagraph (B) shall be applied, for and after the month in which section 202(k)(2)(A) ceases to apply, as though paragraph (1) had not been applicable to such total of benefits for February 1968, or 101

(3) when any of such individuals is entitled to monthly benefits as a divorced wife under section 202(b) or as a surviving divorced wife under section 202(e) for any month, the benefit to which she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 202 on the wages and self-employment income of such insured individual shall be determined as if no such divorced wife or surviving divorced wife were entitled to benefits for such month. In any case in which benefits are reduced pursuant to the preceding provisions of this subsection, such reduction shall be made after any deductions under this section and after any deductions under section 222(b). Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased; except that if such total of benefits for such month includes any benefit or benefits under section 202(d) which are payable solely

The amendments made by section 101(b) are applicable with respect to monthly benefits under title II of the Social Security Act for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968. For paragraph (2) as it read prior to this amendment, see p. 683, vol. II.

by reason of section 216(h)(3), the reduction shall be first applied to reduce (proportionately where there is more than one benefit so payable) the benefits so payable (but not below zero). 102

Deductions on Account of Work

(b) Deductions, in amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(1) such individual's benefit or benefits under section 202 for

any month, and

(2) if such individual was entitled to old-age insurance benefits under section 202(a) for such month, the benefit or benefits of all other persons for such month under section 202 based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (1) and (2). If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's insurance benefits, is married to an individual entitled to old-age insurance benefits under section 202(a), such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f), be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 202 for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f), only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f)-

(A) an individual shall be deemed to be entitled to payments under section 202 equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the

penultimate sentence thereof; and

¹⁰² P.L. 90–248, sec. 163(a) (1), amended the last sentence of sec. 203(a) in its entirety. Applicable only with respect to monthly benefits payable under title II of the Social Security Act with respect to individuals who become entitled to benefits under sec. 202(d) of such Act solely by reason of sec. 216(h)(3) of such Act in or after January 1968 (but without regard to sec. 202(j)(1) of such Act). The provisions of P.L. 90–248, sec. 170, shall not apply with respect to any such individual. See p. 521, vol. II, for sec. 170 of P.L. 90–248. See also P.L. 90–248 sec. 163(b) p. 521, vol. II, for special provisions concerning benefit amounts of certain beneficiaries entitled for January 1968, when other beneficiaries were entitled prior to such month by reason of sec. 216(h)(3) of the Social Security Act. Prior to such amendment, the last sentence of sec. 203(a) read: "Whenever a reduction is made under this subsection, each benefit, except the old-age or disability insurance benefit, shall be proportionately decreased."

(B) if a deduction is made with respect to an individual's benefit or benefits under section 202 because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 222 (b), such individual shall not be considered to be entitled to any benefits under such section 202 for such month.

Deductions on Account of Noncovered Work Outside the United States or Failure To Have Child in Care

(c) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 202 for any month-

(1) in which such individual is under the age of seventy-two and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States; or

(2) in which such individual, if a wife under age sixty-five entitled to a wife's insurance benefits, did not have in her care (individually or jointly with her husband) a child of her husband entitled to a child's insurance benefit and such wife's insurance benefit for such month was not reduced under the provisions of section 202(q); or

(3) in which such individual, if a widow entitled to a mother's insurance benefit, did not have in her care a child of her deceased

husband entitled to a child's insurance benefit; or

(4) in which such individual, if a surviving divorced mother entitled to a mother's insurance benefit, did not have in her care a child of her deceased former husband who (A) is her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of her deceased former husband.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 202(s) applies or an event specified in section 222(b) occurs with respect to such child. Subject to paragraph (3) of such section 202(s), no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 62.103

108 P.L. 90-248, sec. 104(d)(1)(A), amended the third sentence of section 203(c) by adding at the end thereof:

has not attained age 62".

Applicable with respect to monthly benefits under title II of the Social Security Act for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

adding at the end thereor:

"; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained age 62 (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower is entitled and has not attained age 60.

Deductions From Dependents' Benefits on Account of Noncovered Work Outside the United States by Old-Age Insurance Beneficiary

(d) (1) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which such individual is under the age of seventy-two and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's insurance benefits is married to an individual who is entitled to old-age insurance benefits and on seven or more different calendar days of which such individual engaged in noncovered remunerative activity outside the United States.

Occurrence of More Than One Event

(e) If more than one of the events specified in subsections (c) and (d) and section 222(b) occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

Months to Which Earnings Are Charged

(f) For purposes of subsection (b)—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons are entitled for such month under section 202 on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 202 on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 202(a) and other persons are entitled to benefits under section 202(b), (c), or (d) on the basis of the wages and selfemployment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding

provisions of this paragraph, but subject to section 202(s), no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this title, (B) in which such individual was age seventy-two or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained age 62 (but only if she became so entitled prior to attaining age 60) or widower's insurance benefits and has not attained age 62, or (E) 104 in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than \$140.105

(2) As used in paragraph (1), the term "first month of such taxable year" means the earliest month in such year to which the charging of excess earnings described in such paragraph is not prohibited by the application of clauses (A), (B), (C), (D), and

 $(E)^{106}$ thereof.

(3) For purposes of paragraph (1) and subsection (h), an individual's excess earnings for a taxable year shall be his earnings for such year in excess of the product of \$140 107 multiplied by the number of months in such year, except that of the first \$1,200 of such excess (or all of such excess if it is less than \$1,200, an amount equal to one-half thereof shall not be included. The excess earnings as derived under the preceding sentence, if not a multiple of \$1, shall be reduced to the next lower multiple of \$1.

(4) For purposes of clause (E)¹⁰⁸ of paragraph (1)-(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Secretary that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Secretary shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business. 109

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than \$140 110 until it is shown to the satisfaction of the Secretary that such individual did not render such services in such

month for more than such amount.

¹⁰⁴ P.L. 90–248, sec, 104(d)(1)(B), deleted "or (D)" and inserted "(D) for which such individual is entitled to widow's insurance benefits and has not attained age 62 (but only if she became so entitled prior to attaining age 60) or widower's insurance benefits and has not attained age 62, or (E)". Applicable as indicated in footnote 39, of this title.

105 P.L. 90–248, sec. 107(a)(1), deleted "\$125" and inserted "\$140". Applicable with respect to taxable years ending after December 1967.

105 P.L. 90–248, sec. 104(d)(1)(C), deleted "and (D)" and inserted "(D), and (E)".

105 P.L. 90–248, sec. 104(d)(1)(D), deleted "(D)" and inserted "(E)".

106 P.L. 90–248, sec. 104(d)(1)(D), deleted "(D)" and inserted "(E)".

107 Regulations of the Secretary appear in chapter III of title 20 of the Code of Federal Regulations.

Regulations.

10 See footnote 105, this title.

(5) (A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section 211, except that paragraphs (1), (4), and (5) of section 211(c) shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D), and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(9) of the Internal Revenue Code of 1954) taken into account under clause (i) over the gross income (plus his distributive share of in-

come so described) taken into account under clause (i). (C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in subsections (a), (g) (2), (g) (3), (h) (2), and (j) of section 209; and in making such computation services which do not constitute employment as defined in section 210, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment.

(D) In the case of an individual—

(i) who has attained the age of 65 on or before the last day

of the taxable year, and

(ii) who shows to the satisfaction of the Secretary that he is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he attained the age of 65 and that the property to which the copyright or patent relates was created by his own personal efforts,

there shall be excluded from gross income any such royalties.

(6) For purposes of this subsection, wages (determined as provided in paragraph (5) (C) which, according to reports received by the Secretary, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Secretary that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Secretary that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons are entitled under section 202 for such month on the basis of his wages and self-employment income, the difference between

such total and the excess so charged to such month shall be paid (if it is otherwise payable under this title) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 202 (k) (3), and prior to the application of section 203 (a)) bears to the total of the benefits to which all of them are entitled.

Penalty for Failure To Report Certain Events

(g) Any individual in receipt of benefits subject to deduction under subsection (c) (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Secretary prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect

to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term "period for which there is a failure to report" with respect to any individual means the period for which such individual received and accepted insurance benefits under section 202 without making a timely report and for which deductions are required under subsection (c). 111

Report of Earnings to Secretary

(h) (1) (A) If an individual is entitled to any monthly insurance benefit under section 202 during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f), in excess of the product of \$140 112 times the number of

[&]quot;in P.L. 90-248, sec. 161(b), deleted:

"an additional deduction equal to that imposed under subsection (c), except that the first additional deduction imposed by this subsection in the case of any individual shall not exceed an amount equal to one month's benefit even though the failure to report is with respect to more than one month", and inserted "deductions in addition * * * under subsection (c)". Applicable with respect to any deductions imposed on or after January 2, 1968, under subsecs. 203(g) and (h) of the Social Security Act on account of failure to make a report required thereby.

122 P.L. 90-248, sec. 107(a)(2), inserted "\$140" in lieu of "\$125", applicable with respect to taxable years ending after December 1967.

months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. 113 Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained the age of 72, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant a reasonable extension of time for making the report of earnings required in this paragraph if he finds that there is valid reason for a delay, but in no case may the period be extended more than three months. 114

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this title on the basis of the same wages and self-employment income, files with the Secretary information showing that a benefit

for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1), within the time prescribed by or in accordance with such paragraph, 115 for any taxable year and any deduction is imposed under subsection (b) by reason of his earnings for such year, he shall suffer

additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202, except that if the deduction imposed under subsection (b) by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 202, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) but not less than \$10; 116

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional de-

¹¹³ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
114 P.L. 90-248, sec. 160(a), added this sentence.
115 P.L. 90-248, sec. 160(b), inserted "by or in accordance with such paragraph" in lieu of "within the time prescribed therein".
116 P.L. 90-248, sec. 161(a), inserted:
", except that if the deduction imposed under subsection (b) by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 202, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) but not less than \$10" before the semicolon. Applicable with respect to any deductions imposed on or after January 2, 1968, under subsections (g) and (h) of section 203 of the Social Security Act on account of failure to make a report required thereby.

duction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit

under section 202;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 202 and for which deductions are imposed under subsection (b) by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such

years, shall be disregarded.

(3) If the Secretary determines, on the basis of information obtained by or submitted to him, that it may reasonably be expected that an individual entitled to benefits under section 202 for any taxable year will suffer deductions imposed under subsection (b) by reason of his earnings for such year, the Secretary may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Secretary may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Secretary has determined whether or not any deduction is imposed for such month under subsection (b). The Secretary is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Secretary may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Secretary such other information with respect to such earnings as the Secretary may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 202 for such year, the Secretary requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f) for such taxable year or any other information with respect to such earnings which the Secretary may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) for each month in such taxable year (or only for such months thereof as the Secretary may specify) by reason of his earnings for such year.

Circumstances Under Which Deductions and Reductions Not Required

(i) In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 222(b), shall, notwithstanding such provisions, be made from the benefits to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment income, to such individual and the other individuals living in the same household.

Attainment of Age Seventy-two

(j) For the purposes of this section, an individual shall be considered as seventy-two years of age during the entire month in which he attains such age.

Noncovered Remunerative Activity Outside the United States

(k) An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 210 and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 211(a). When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term "United States" does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) and the term "trade or business" shall have the same meaning as when used in Section 162 of the Internal Revenue Code of 1954.

Good Cause for Failure To Make Reports Required

(1) The failure of an individual to make any report required by subsection (g) or (h) (l) (A) within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Secretary that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.¹¹⁷

¹¹⁷ See footnote 113, this title.

Overpayments and Underpayments 118

Sec. 204. (a) 119 Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this title, proper adjustment or recovery shall be made, under regu-

lations prescribed by the Secretary, 120 as follows:

(1) With respect to payment to a person of more than the correct amount, the Secretary shall decrease any payment under this title to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this title payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply any combination of the foregoing. A payment made under this title on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 210(m)) on active duty (as defined in section 210(1)) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive. 121

(2) With respect to payment to a person less than the correct amount, the Secretary shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall

be made in accordance with subsection (d).122

(b) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if

118 With respect adjustments of title XVIII overpayments against payment of benefits under title II, see sec. 1870.

119 P.L. 90-248, sec. 152(a), amended section 204(a) in its entirety. Prior to such amendment, this section read as follows:

"(a) Whenever an error has been made with respect to payments to an individual under this title (including payments made prior to January 1, 1940), proper adjustments shall be made, under regulations prescribed by the Secretary, by increasing or decreasing subsequent payments to which such individual is entitled. If such individual dies before such adjustment has been completed, adjustment shall be made by increasing or decreasing subsequent benefits payable with respect to the wages and self-employment income which were the basis of benefits of such deceased individual."

120 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

120 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

121 PL. 90-248, sec. 153(a), amended section 204(a)(1) by adding at the end a new sentence, "A payment made under this title on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 210(m)) on active duty (as defined in section 210(1)) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive."

Applicable with respect to benefits under title II of the Social Security Act if the individual to whom such benefits were paid would have been entitled to such benefits in or after January 1968 if the report mentioned in the amendment made by subsection (a) of this section had been correct (but without regard to the provisions of section 202(j) (1) of such Act).

122 See footnote 119, this title.

¹¹⁸ With respect to adjustments of title XVIII overpayments against payment of benefits

such adjustment or recovery would defeat the purpose of this title or

would be against equity and good conscience. 123

(c) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b), or where adjustment under subsection (a) is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) If an individual dies before any payment due him under this title is completed, payment of the amount due (including the amount

of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to be

the surviving spouse of the deceased individual;

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this

¹²³ P.L. 90-248, sec. 152(b), amended section 204(b) in its entirety. Prior to such amendment, this section read as follows:
"There shall be no adjustment or recovery by the United States in any case where incorrect payment has been made to an individual who is without fault (including payments made prior to January 1, 1940), and where adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience."

title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in

equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representative of the estate of the deceased individual, if any. 124

Evidence, Procedure, and Certification for Payment

Sec. 205. (a) The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder. 125

(b) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, husband, widower, child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within such period after such decision as may be prescribed in regulations of the Secretary, except that the period so prescribed may not be less than six months after notice of such decision is mailed to the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

(c) (1) For the purposes of this subsection

(A) The term "year" means a calendar year when used with respect to wages and a taxable year (as defined in section 211(e)) when used with respect to self-employment income.

¹²⁴ P.L. 90-248, sec. 154(a), amended section 204(d) in its entirety. Prior to such amendment, this section read as follows:
"Notwithstanding the provisions of subsection (a), if an individual dies before any payment due him under this title is completed, and the total amount due at the time of his death does not exceed the amount of the monthly insurance benefits to which he was entitled for the month preceding the month in which he died, payment of the amount due shall be made-

shall be made—

(1) to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual and to have been living in the same household with the deceased at the time of his death, or

(2) if there is no such person, or if such person dies before receiving payment, to the legal representative of the estate of such deceased individual."

125 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced mother, child, or parent,

who survives such individual.

(2) On the basis of information obtained by or submitted to the Secretary, and after such verification thereof as he deems necessary, the Secretary shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(3) The Secretary's record shall be evidence for the purpose of proceedings before the Secretary or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was

derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Secretary may, if it is brought to his attention that any entry of wages or self-employment income in his records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in his records, as the case may be. After the expiration of the time limitation following any year—

(A) the Secretary's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this

title;

(B) the absence of an entry in the Secretary's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this title that no such alleged wages were paid to

such individual in such period; and

(C) the absence of an entry in the Secretary's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this title that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Secretary shall include in his records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-

employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only-

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Secretary's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Secretary's decision on any such request shall be given to the individual who made the request:

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this title when they should have been credited under the Railroad Retirement Act, or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act when they should have been credited under this title;

(E) to delete or reduce the amount of any entry which is

erroneous as a result of fraud;

(F) to conform his records to—126

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, under chapter 2 or 21 of the Internal Revenue Code of 1954, or under regulations made under authority of such title, subchapter, or chapter;

(ii) wage reports filed by a State pursuant to an agreement under section 218 or regulations of the Secretary, 127

thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 218, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section; 128

¹²⁸ P.L. 89-97, sec. 331(c), provides that notwithstanding any provision of sec. 205(c) (5)(F) the Secretary of Health, Education, and Welfare may conform, before April 16, 1970, his records to tax returns or statements of earnings which constitute self-employment income solely by reason of the filing of a certificate which is effective under sec. 1402(e)(5) of the Internal Revenue Code of 1954.

127 See footnote 125, this title.

128 See sec. 102(f)(3)(B) of P.L. 86-778, p. 495, vol. II for certain cases in which assessments will be deemed to have been made during the period specified in sec. 218(q).

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Secretary's records pursuant to this subparagraph; 129

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the rec-

ords of the Secretary;

(H) to include wages paid during any period in such year to an individual by an employer if there is an absence of an entry in the Secretary's records of wages having been paid by such

employer to such individual in such period;

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k) (3) of the Railroad Retirement

Act of 1937; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Secretary as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion

of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Secretary of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Secretary of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of his records pursuant to this subsection, as the Secretary may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual named therein, or (2) by registered mail or by certified mail the Secretary shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in his records as may be required by such

findings and decision.

(8) Decisions of the Secretary under this subsection shall be reviewable by commencing a civil action in the United States district court

as provided in subsection (g).

(d) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this title, or relative to any

 $^{^{120}}$ See sec. 101(e) of P.L. 86–778, p. 495, vol. II for circumstances under which the provisions of sec. 205(c) (5) (F) are not applicable.

other matter within his jurisdiction hereunder, the Secretary shall have power to issue subpense requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Secretary shall be served by anyone authorized by him (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpensed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue an order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be

punished by said court as contempt thereof.

(f) No person so subpensed or ordered shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a pensity or forfeiture; but no person shall be prosecuted or subjected to any pensity or forfeiture for, or on account of, any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such person so testifying shall not be exempt from prosecution and punishment for perjury committed in so

testifying.

(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the District Court of the United States for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the

Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Secretary, because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court shall, on motion of the Secretary made before he files his answer, remand the case to the Secretary for further action by the Secretary, and may, at any time, on good cause shown, order additional evidence to be taken before the Secretary, and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(h) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under Section 24 of the Judicial Code of the United States to recover on any claim arising under this title.

(i) Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Fiscal Service of the Treasury Department, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary: Provided, That where a review of the Secretary's decision is or may be sought under subsection (g) the Secretary may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

(j) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.

(k) Any payment made after December 31, 1939, under conditions set forth in subsection (j), any payment made before January 1, 1940,

to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Secretary of incompetency prior to certification of payment, if otherwise valid under this title, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(1) The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health, Education, and Welfare designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of sub-

section (e).

(m) [Repealed.] 130

(n) The Secretary may, in his discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 204(a) with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this title for such month.

Crediting of Compensation Under the Railroad Retirement Act

(o) If there is no person who would be entitled, upon application therefor, to an annuity under section 5 of the Railroad Retirement Act of 1937, or to a lump-sum payment under subsection (f) (1) of such section, 131 with respect to the death of an employee (as defined in such Act), then, notwithstanding section 210(a) (9) of this Act, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 4 of such Act if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 217 of this Act) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this title on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this title, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

¹²⁰ This subsection was repealed by sec. 101(b)(2) of the Social Security Act Amendments of 1950 (P.L. 784, 81st Cong.). The subject matter now appears in sec. 202(j)(2) of this Act.

221 See p. 877, vol. II.

Special Rules in Case of Federal Service

(p) (1) With respect to service included as employment under section 210 which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (1)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, 132 to which the provisions of section 210(o) are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 209, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 3122 of the Internal Revenue Code of 1954 133 and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Secretary, to make certification to him with respect to any matter determinable for the Secretary by such head or his agents under this subsection, which the Secretary

find necessary in administering this title.

(3) The provisions of paragraphs (1) and (2) shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of the Treasury shall be deemed to be the head of such instrumentality.

 $^{^{132}}$ See pp. 855-858, vol. II for per tinent provisions of the Peace Corps Act. 133 See p. 423, vol. I.

Expedited Benefit Payments 184

(q) (1) The Secretary shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this title will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this title was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment

of such benefit-

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of

such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Secretary (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Secretary has evidence that such allegation is true, whichever is later),

the Secretary shall, if he finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to

have been filed.

(3) In any case in which the Secretary determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2) (A) is true, he may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2) (B) (i) and (B) (ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing

officer.

(5) For purposes of this subsection, benefits payable under section 228 shall be treated as monthly insurance benefits payable under this title. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 223, or section 202 to a wife, husband, or child of an individual entitled to or applying for

¹⁸⁴ P.L. 90-248, sec. 171(a), added new subsection (q). Effective with respect to written requests filed under section 205(q) of the Social Security Act after June 30, 1968.

benefits under section 223, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

Representation of Claimants

Sec. 206. (a) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Secretary, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimant valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. 135 An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. 136 Whenever the Secretary, in any claim before him for benefits under this title, makes a determination favorable to the claimant, he shall, if the claimant was represented by an attorney in connection with such claims, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim. If, as a result of such determination, such claimant is entitled to past-due benefits under this title, the Secretary shall, notwithstanding section 205(i), certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such pastdue benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary shall be deemed guilty of a misdemeanor and, upon con-

¹²⁵ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
126 See footnote 135, this title.
137 P.L. 90-248, sec. 173, inserted the material starting with "Whenever the Secretary, in any claim before him for benefits under this title, * * *".

viction thereof, shall for each offense be punished by a fine not exceed-

ing \$500 or by imprisonment not exceeding one year, or both.

(b) (1) Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Secretary may, notwithstanding the provisions of section 205(i), certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than

\$500, or imprisonment for not more than one year, or both.

Assignment

Sec. 207. The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.¹³⁸

Penalties

Sec. 208. Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this title, or for the purpose of causing any payment to be made where no payment is authorized under this title, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954) as to—

(1) whether wages were pair or received for employment (as said terms are defined in this title and the Internal Revenue Code), or the amount of wages or the period during which paid

or the person to whom paid; or

(2) whether net earnings from self-employment (as such term is defined in this title and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period

during which or the person by whom derived; or

(3) whether a person entitled to benefits under this title had earnings in or for a particular period (as determined under section 203(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

¹³⁸ See, however, sec. 6331 and sec. 6334 of the Internal Revenue Code of 1954, pp. 457 and 458, this volume.

(b) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this title; or

(c) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to pay-

ment under this title; or

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this title, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(e) having made application to receive payment under this title for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$1,000 or imprisoned for not more than one year, or both.

Definition of Wages

Sec. 209. For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(a) (1) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid

to such individual during such calendar year;

(2) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(3) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966,

is paid to such individual during such calendar year;

(4) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to \$6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, 139 is paid to such individual during such calendar year;

(5) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this

¹³⁹ P.L. 90-248, sec. 108(a)(1)(A), inserted "and prior to 1968".

section) equal to \$7,800 with respect to employment has been paid to an individual during any calendar year after 1967, is paid to such

individual during such calendar year; 140

(b) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (1) retirement, or (2) sickness or accident disability, or (3) medical or hospitalization expenses in connection with sickness or accident disability, or (4) death;

(c) Any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to provide

for any such payment) on account of retirement;

(d) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar

month in which the employee worked for such employer;

(e) Any payment made to, or on behalf of an employee or his beneficiary (1) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939 at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954, unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1939, or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a) (3), (4), (5), and (6) of the Internal Revenue Code of 1954,141 or (3) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1954, or (4) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954;

(f) The payment by an employer (without deduction from the remuneration of the employee) (1) of the tax imposed upon an employee under section 1400 of the Internal Revenue Code of 1939, or in the case of a payment after 1954 under section 3101 of the Internal Revenue Code of 1954, 142 or (2) of any payment required from an employee

under a State unemployment compensation law;

(g) (1) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(2) Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the em-

¹⁴⁰ P.L. 90-248, sec. 108(a)(1)(B), added new paragraph (5). Applicable only with respect to remuneration paid after December 1967.

141 For sec. 401 of the Internal Revenue Code of 1954, see p. 357, this volume.

142 For sec. 3101 of the Internal Revenue Code of 1954, see p. 399, this volume.

ployer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50. As used in this paragraph, the term "domestic service in a private home of the employer"

does not include service described in section 210 (f) (5);

(3) Cash remuneration paid by an employer in any calendar quarter to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50. As used in this paragraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in section 210(f) (5);

(h) (1) Remuneration paid in any medium other than cash for agri-

cultural labor;

(2) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more, or (B) the employee performs agricultural labor for the employer on twenty days or more during such year for cash re-

muneration computed on a time basis;

(i) Any payment (other than vacation or sick pay) made to an employee after the month in which he attains age 62 (if a woman) or age 65 (if a man), if he did not work for the employer in the period for which such payment is made. As used in this subsection, the term "sick pay" includes remuneration for service in the employ of a State, a political subdivision (as defined in section 218(b)(2)) of a State, or an instrumentality of two or more States, paid to an employee thereof for a period during which he was absent from work because of sickness;

(j) Remuneration paid by an employer in any quarter to an employee for service described in section 210(j)(3)(C) (relating to home workers), if the cash remuneration paid in such quarter by the

employer to the employee for such service is less than \$50;

(k) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1954;

(1) (1) Tips paid in any medium other than cash;

(2) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more; or

(m) Any payment or series of payments by an employer to an em-

ployee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, (B) retirement for disability, or (C) retirement after attaining an age specified in the plan referred to in paragraph (2) or in a pension plan of the employer, and

(2) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees

and their dependents),

other than any such payment or series of payment which would have

been paid if the employee's employment relationship had not been

so terminated.143

For purposes of this title, in the case of domestic service described in subsection (g) (2), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this title,144 be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (g)(2).

For purposes of this title, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 210(l) (1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor

Benefits Act. 145

For purposes of this title, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act,¹⁴⁶ to which the provisions of section 210(o) are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(l) of the Peace Corps Act, and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

For purposes of this title, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954 or (if no statement including such tips is so furnished) at the time

received.147

Definition of Employment

Sec. 210. For the purposes of this title—

Employment

(a) The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after

¹⁴⁸ P.L. 90-248, sec. 504(c), added new subsection 209(m). Applicable with respect to remuneration paid after January 2, 1968.

144 The regulations promulgated under title II of the Social Security Act are contained in chapter III of thie 20 of the Code of Federal Regulations.

145 Sec. 102(10) of the Servicemen's and Veterans' Survivor Benefits Act has been codified in secs. 401 and 403 of title 38, United States Code (see pp. 943 and 944, vol. II).

146 See secs. 5 and 6 of the Peace Corps Act, pp. 855-858, vol. II.

147 See p. 451, vol. I, for sec. 6053 of the Internal Revenue Code of 1954.

1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee (i) of an American employer (as defined in subsection (e)), or (ii) of a foreign subsidiary (as defined in section 3121(1) of the Internal Revenue Code of 1954) of a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954) 148 during any period for which there is in effect an agreement, entered into pursuant to section 3121(1) of the Internal Revenue Code of 1954, with respect to such subsidiary; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended, or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor:

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) (A) Service performed by an individual in the employ of his spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such em-

ployer is living in the home, and
(iii) the son, daughter, stepson, or stepdaughter (referred
to in clause (ii)) has not attained age 18 or has a mental or
physical condition which requires the personal care and super-

¹⁴⁸ For secs. 3121(1) and 7701 of the Internal Revenue Code of 1954, see pp. 419 and 472, vol. I.

vision of an adult for at least 4 continuous weeks in the

calendar quarter in which the service is rendered; 150

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 of the Internal Revenue Code of 1954 151 by virtue of any provisions of law which specifically refers

to such section in granting such exemption;

(6) (A) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law

of the United States; 152

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to-

(i) service performed in the employ of a corporation which

is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, 153 or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Production and Market-

ing Administration:

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Ex-

¹⁵⁰ P.L. 90-248, sec. 123(a), inserted the provisions beginning with "except that" and ending with "is rendered". Applicable with respect to services performed after December 31, 1967.

151 See p. 402, vol. I, for sec. 3111 of the Internal Revenue Code of 1954.
152 P.L. 87-262, enacted September 21, 1961, provided for the transfer of Freedmen's Hospital to Howard University. Sec. 2(c) of P.L. 87-262 provides as follows:

"(c) Each individual who is an employee of Freedmen's Hospital on the date of enactment of this Act and who transfers to Howard University shall, so long as he is continuously in the employ of Howard University, be regarded as continuing in the employ of the United States for the purposes of the Civil Service Retirement Act, the Federal Employees' Group Life Insurance Act of 1954. For purposes of section 3121(b) of the Internal Revenue Code of 1954 and section 210 of the Social Security Act, service performed by such individual during the period of his employment at Howard University shall be regarded as though performed in the employ of the United States."

See also P.L. 88-452 (Economic Opportunity Act of 1964), sec. 106(b), for status of Job Corps "enrollees" and title VIII of such act for status of "Volunteers in Service to America," pp. 741 and 812, vol. II.

153 Since the provisions of sec. 104(i) (2) (A) and (B) of P.L. 880, 84th Cong. (see p. 488, vol. II) were not complied with, service performed in the employ of Federal home loan banks remains excluded from "employment" for social security coverage purposes.

changes, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) Service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such

service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an in-

mate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code 154 (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), 155 other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other

similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, 156 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority);

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this

paragraph shall not apply in the case of—

(A) service included under an agreement under section 218.

(B) service which, under subsection (k), constitutes cov-

ered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a mem-

¹⁵⁴ P.L. 90-248, sec. 403(a)(1), inserted "under section 5351(2) of title 5, United States Code" in lieu of "under section 2 of the Act of August 4, 1947".

¹⁵⁵ P.L. 90-248, sec. 403(a)(1), deleted "5 U.S.C., sec. 1052".

¹⁵⁶ P.L. 90-248, sec. 403(a)(2), inserted "subchapter III of chapter 83 of title 5, United States Code," in lieu of "the Civil Service Retirement Act".

ber of the legislature of any such Government or political

subdivision), and, for purposes of this title—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof.

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby,

whichever is appropriate, 157 or

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed-

(i) in a hospital or penal institution by a patient or

inmate thereof:

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code 158 (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), 159 other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake,

flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis;

(8) (A) Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required

by such order:

(B) Service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) of the Internal Revenue Code of 1954, which is exempt from income tax under section 501(a) of such Code, 160 but this subparagraph shall not apply to service performed during the period for

¹⁵⁷ P.L. 86–778, sec. 103(v)(1) sets forth certain conditions to be met to effectuate the coverage extension of sec. 210(a)(7)(C) to officers and employees of Guam and American Samoa. American Samoa complied with such conditions on December 28, 1960, and coverage became effective with January 1, 1961. The Government of Guam has not as yet complied with the conditions for effectuating the coverage provisions and therefore the services of officers and employees of Guam and its political subdivisions and instrumentalities remain excluded from coverage.

¹⁵⁸ P.L. 90–248, sec. 403(a)(3), inserted "under section 5351(2), of title 5, United States Code" in lieu of "under section 2 of the Act of August 4, 1947".

¹⁵⁹ P.L. 90–248, sec. 403(a)(3), deleted "5 U.S.C. 1052".

which a certificate, filed pursuant to section 3121(k) of the Internal Revenue Code of 1954,161 is in effect if such service is performed by an employee-

(i) whose signature appears on the list filed by such orga-

nization under such section 3121(k),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a

certificate referred to in clause (iii)) was filed, or

(iii) who, after the calendar quarter in which the certificate was filed with respect to a group described in paragraph (1) (E) of such section 3121(k), became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in such paragraph (1) (E) with respect to which no certificate is

in effect; 162

(9) Service performed by an individual as an employee or employee representative as defined in section 3231 of the Internal

Revenue Code of 1954; 163

(10) (A) Service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 of the Internal Revenue Code of 1954,164 if the remuneration for such service is less than \$50;

(B) Service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college,

or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) Service performed in the employ of an instrumentality

wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States

Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof:

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training

school chartered or approved pursuant to State law;

(14) (A) Service performed by an individual under the age of eighteen in the delivery of distribution of newspapers or shop-

 $^{^{164}}$ See p. 416, vol. I. 162 See secs. 105(b) and 105(c) (2) of P.L. 86–778 on pp. 497 and 498, vol. II. 163 See p. 425, vol. I, for sec. 3231 of the Internal Revenue Code of 1954. See also sec. 5(k) of the Raliroad Retirement Act of 1937, as amended, p. 882, vol. II, which provides that this sec. 210 (a) (9) shall not be operative with respect to certain employees. 164 For sec. 501 of the Internal Revenue Code of 1954, see p. 375, vol I.

ping news, not including delivery or distribution to any point for

subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Or-

ganizations Immunities Act (59 Stat. 669); 165

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which-

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry,

and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities pro-

duced;

(17) Service in the employ of any organization which is performed (A) in any quarter during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;
(18) Service performed in Guam by a resident of the Republic

of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a) (15) (H) (ii) of the Immigration and Nationality Act 166

(8 Ú.S.C. 1101 (a) (15) (H) (ii)); or

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a) (15) of the Immigration and Nationality Act, 167 as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.

Included and Excluded Service

(b) If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall

 ¹⁶⁵ See p. 834, vol. II, for provisions of the International Organizations Immunities Act.
 166 See p. 823, vol. II.
 167 See p. 823, vol. II.

⁹⁰⁻²⁷⁵ O-68-pt. 1-7

be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a).

American Vessel

(c) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

American Aircraft

(d) The term "American aircraft" means an aircraft registered under the laws of the United States.

American Employer

(e) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

Agricultural Labor

(f) The term "agricultural labor" includes all service performed—
(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15 (g) of the Agricultural Marketing Act, as amended, or in connection

with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and

storing water for farming purposes.

(4) (A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar quarter in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service

in a private home of the employer.

The provisions of subparagraphs (A) and (B) of paragraph (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Farm

(g) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

State

(h) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

United States

(i) The term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Employee

(j) The term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who per-

forms services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or drycleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person

designated by him; or

(D) as a traveling or city salesman, other than as an agentdriver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use

in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

Covered Transportation Service

(k) (1) Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation sys-

tem shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from

private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition

after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of

such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees de-

scribed in subparagraph (C).

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transporta-

tion system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this title, and some of such employees become employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

Service in the Uniformed Services

(1)(1) Except as provided in paragraph (4), the term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act, 168 except that it shall also include "active duty for training" as described in such section. 169

(3) The term "inactive duty training" means "inactive duty train-

ing" as described in such section 102.170

(4) (A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 4 of the Railroad Retirement Act of 1937. The Railroad Retirement Board shall notify the Secretary of Health, Education, and Welfare, as provided in section 4(p) (2) of that Act, 171 with respect to all such service which is so creditable.

(B) In any case where benefits under this title are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Secretary, the Secretary shall certify no further benefits for payment under this title on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Secretary prior to the end of the month in which he receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Secretary shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A), and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

Member of a Uniformed Service

(m) The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102 (3) of the Servicemen's and Veterans' Survivor Benefits Act), 172 or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve:

 ¹⁶⁸ Now sec. 101 (21) of title 38, United States Code, see p. 939, vol. II.
 ¹⁶⁹ Now sec. 101 (22) of title 38, United States Code, see p. 939, vol. II.
 ¹⁷⁰ Now sec. 101 (23) of title 38, United States Code, see p. 939, vol. II.
 ¹⁷¹ Secetion 4 (p) has ben redesignated 4 (n). See p. 874, vol. II.
 ¹⁷² Now sec. 101 (27) of title 38, United States Code, see p. 940, vol. II.

(3) a cadet at the United States Military Acadamy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force

Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or

naval service-

(A) who has been provisionally accepted for such duty; or (B) who, under the Universal Military Training and Service Act, has been selected for active military or naval service:

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard

Reserve.

Crew Leader

(n) The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

Peace Corps Volunteer Service

(o) The term "employment" shall, notwithstanding the provisions of subsection (a), include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.¹⁷³

Self-Employment

Sec. 211. For the purposes of this title—

Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under Subtitle A of the Internal Revenue Code of 1954,¹⁷⁴ derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described

¹⁷³ See p. 855, vol. II. ¹⁷⁴ See p. 352, vol. I,

in section 702(a)(9) of the Internal Revenue Code of 1954, 175 from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant with respect to any such agricultural or horiticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 35 of the Internal Revenue Code of 1954 176) are received in the course of a trade or

business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under Subtitle A of the Internal Revenue Code of 1954 as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954 applies to such gain or loss, 177 or (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) The deduction for net operating losses provided in section

172 of such Code 178 shall not be allowed;

(5) (A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

¹⁷⁵ See p. 382, vol. I.
¹⁶⁰ See p. 353, vol. I.
¹⁷⁷ See p. 380, vol. I, for sec. 631, Internal Revenue Code.
¹⁷⁸ See p. 355, vol. I.

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from selfemployment of such partner, and no part of such share shall be taken into account in computing the net earnings from selfemployment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions

of section 933 of the Internal Revenue Code of 1954; 179

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c) (4) without regard to section 107 (relating to rental value of parsonages) 180 and section 119 (relating to meals and lodging furnished for the convenience of the employer) of the Internal Revenue Code of 1954 181 and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 210(e)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without the United States) 152 and section 931 (relating to income from sources within possessions of the United States) of such Code; 183

(8) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) 184 and 932 (relating to citizens of possessions of the United States) 185 of the Internal Revenue Code of 1954 shall be deemed not to include the Virgin Islands, Guam, or American

Samoa; and

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in

which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from

¹⁷⁹ See p. 387, vol. I. 180 See p. 353, vol. I. 181 See p. 353, vol. I. 182 See p. 382, vol. I. 183 See p. 384, vol. I. 184 See p. 384, vol. I. 185 See p. 385, vol. I.

the other partners to such partner except with respect to re-

tirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A).186

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 210(f)-

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than \$2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66% per-

cent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than \$2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than \$1,600, the net earnings from self-employment derived by him from such trade or business may,

at his option, be deemed to be \$1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payment to which section 707(c) of the Internal Revenue Code of 1954 187 applies) is not more than \$2,400, his distributive share of income described in section 702(a) (9) of such Code 188 derived from such trade or business may, at his option, be deemed to be an amount equal to 66% percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954 applies) is more than \$2,400 189 and his distributive share (whether or not distributed) of income described in section 702(a)(9) of such Code 190 derived from such trade or business (computed under this subsection without regard to this sentence) is less than \$1,600, his distributive share

¹⁵⁶ P.L. 90-248, sec. 118(b) (3), added new paragraph (9). Applicable only with respect to taxable years ending on or after December 31, 1967.
167 See p. 382, vol. I.
168 See p. 382, vol. I.
169 See p. 384, vol. I.
160 See p. 384, vol. I.

of income described in such section 702(a) (9) 191 derived from such trade or business may, at his option, be deemed to be \$1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this

subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

Self-Employment Income

(b) The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a non-resident alien individual) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which

is in excess of—

(A) For any taxable year ending prior to 1955, (i) \$3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) \$4,200, minus (ii) the amount of the wages paid to

such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) \$4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, 192 (i) \$6,600, minus (ii) the amount of the wages paid

to such individual during the taxable year; and

(E) For any taxable year ending after 1967, (i) \$7,800, minus (ii) the amount of the wages paid to such individual during the taxable year: 193 or

(2) The net earnings from self-employment, if such net earn-

ings for the taxable year are less than \$400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purposes of this subsection, be considered to be a nonresident alien individual.

 $^{^{191}}$ See p. 382, vol. I. 192 P.L. 90-248, sec. 108(a) (2) (A), added "and prior to 1968". 193 P.L. 90-248, sec. 108(a) (2) (B), added new subparagraph (E).

Trade or Business

(c) The term "trade or business", when used with reference to selfemployment income or net earnings from self-employment, shall have the same meaning as when used in section 162 of the Internal Revenue

Code of 1954, 194 except that such terms shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary pursuant to section 218; 195 195a

(2) The performance of service by an individual as an em-

ployee other than—

(A) service described in section 210(a) (14) (B) performed by an individual who has attained the age of eighteen,

(B) service described in section 210(a) (16),

(C) service described in section 210(a) (11), (12), or (15) performed in the United States by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

and

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary pursuant to section 218; 196

(3) The performance of service by an individual as an employee or employee representative as defined in section 3231 of the

Internal Revenue Code of 1954; 197

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) The performance of service by an individual in the exer-

cise of his profession as a Christian Science practitioner; or

(6) The performance of service by an individual during the period for which an exemption under section 1402(h) of the Internal Revenue Code of 1954 198 is effective with respect to him.

194 See p. 353, vol. I.
195 P.L. 90-248, sec. 122(a) (1), amended sec. 211(c) (1) in its entirety. Applicable with respect to fees received after 1967. Prior to such amendment, sec. 211(c) (1) read: "The performance of the functions of a public office:".
195a Sec. 122(c) (2) of the Social Security Amendments of 1967 provides: "Notwithstanding the provisions of subsections (a) and (b) of this section, any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate, in such manner as the Secretary of the Treasury or his delegate shall by regulations prescribe, a certificate of election of exemption from such amendments."
196 P.L. 90-248, sec. 122(a) (2), added new subparagraph (E). Applicable with respect to fees received after 1967. See footnote 195a, this title.
197 See p. 425, vol. I.
198 See p. 397, vol. I.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1954 is effective with respect to him. 199

Partnership and Partner

(d) The term "partnership" and the term "partner" shall have the same meaning as when used in subchapter K of chapter 1 of the Internal Revenue Code of 1954.200

Taxable Year

(e) The term "taxable year" shall have the same meaning as when used in subtitle A of the Internal Revenue Code of 1954; 201 and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of subtitle A of such Code, in which case his taxable year for the purposes of this title shall be the same as his taxable year under such subtitle A.

Partner's Taxable Year Ending as Result of Death

(f) In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership

taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

Crediting of Self-Employment Income to Calendar Quarters

Sec. 212. For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year shall be credited to calendar quarters as follows:

¹⁰⁰ P.L. 90-248, sec. 115(a), amended the last sentence of section 211(c). Applicable only with respect to taxable years ending after 1967. Prior to such amendment, this sentence read as follows:

"The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual during the period for which a certificate filed by him under section 1402(e) of the Internal Revenue Code of 1954 is in effect."

200 See p. 381, vol. I.

201 See p. 352, vol. I.

(a) In the case of a taxable year which is a calendar year the selfemployment income of such taxable year shall be credited equally to

each quarter of such calendar year.

(b) In the case of any other taxable year the self-employment income shall be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

Quarter and Quarter of Coverage

Definitions

Sec. 213. (a) For the purposes of this title—

(1) The term "quarter", and the term "calendar quarter", means a period of three calendar months ending on March 31, June 30,

September 30, or December 31.

(2) The term "quarter of coverage" means a quarter in which the individual has been paid \$50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 212) with \$100 or more of self-employment income, except that—

(i) no quarter after the quarter in which such individual died shall be a quarter of coverage, and no quarter any part of which was included in a period of disability (other than the initial quarter and the last quarter of such period) shall

be a quarter of coverage;

(ii) if the wages paid to any individual in any calendar year equal \$3,000 in the case of a calender year before 1951, or \$3,600 in the case of a calendar year after 1950 and before 1955, or \$4,200 in the case of a calendar year after 1954 and before 1959, or \$4,800 in the case of a calendar year after 1958 and before 1966, or \$6,600 in the case of a calendar year after 1965 and before 1968, or \$7,800 in the case of a calendar year after 1967,²⁰² each quarter of such year shall (subject to

clause (i) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals \$3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or \$4,200 in the case of a taxable year ending after 1954 and before 1959, or \$4,800 in the case of a taxable year ending after 1958 and before 1966, or \$6,600 in the case of a taxable year after 1965 and before 1968, or \$7,800 in the case of a taxable year ending after 1967,203 each quarter any part of which falls in such year shall (subject to clause (i)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954, then, subject to clause (i), (a) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if

²⁰⁸ P.L. 90–248, sec. 108(a)(3)(A), deleted "after 1965" and inserted "after 1965 and before 1968, or \$7,800 in the case of a taxable year ending after 1967".

²⁰⁸ P.L. 90–248, sec. 108(a)(3)(B), deleted "after 1965" and inserted "after 1965 and before 1968, or \$7,800 in the case of a taxable year ending after 1967."

such wages equal or exceed \$100 but are less than \$200; (b) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed \$200 but are less than \$300; (c) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed \$300 but are less than \$400; and (d) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are \$400 or more; and
(v) no quarter shall be counted as a quarter of coverage

prior to the beginning of such quarter.

If, in the case of any individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954, the requirements for insured status in subsection (a) or (b) of section 214, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 214(a) (3) 204 are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

Crediting of Wages Paid in 1937

(b) With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than \$100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than \$100 were paid in any such period, the total amount thereof shall be deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

²⁰⁴ This reference is to sec. 214(a)(3) as in effect prior to repeal by the Social Security Amendments of 1960 (P.L. 86-778), see p. 620, vol. II.

Alternative Method for Determining Quarters of Coverage With Respect to Wages in the Period From 1937 to 1950 205

(c) For purposes of section 214(a), an individual shall be deemed to have one quarter of coverage for each \$400 of his total wages prior

to 1951 (as defined in section 215(d)(1)(C)), except where-

(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

(2) such individual's elapsed years (for purposes of section

214(a)(1) are less than 7.

Insured Status for Purposes of Old-Age and Survivors Insurance Benefits

Sec. 214. For the purposes of this title

Fully Insured Individual

(a) The term "fully insured individual" means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before—

(A) in the case of a woman, the year in which she died or

(if earlier) the year in which she attained age 62,

(B) in the case of a man who has died, the year in which he died or (if earlier) the year in which he attained age 65, or (C) in the case of a man who has not died, the year in which he attained (or would attain) age 65,

except that in no case shall an individual be a fully insured in-

dividual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quar-

ters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 216(i)).

Currently Insured Individual

(b) The term "currently insured individual" means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this title as in effect prior to the enactment of this section, or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period

 $^{^{205}}$ P.L. 90-248, sec. 155(b)(1), added new subsection (c). Applicable only in the case of an individual who applies for benefits under section 202(a) of the act after January 2, 1968, or who dies after such date without being entitled to benefits under section 202(a) or 223 of the act.

any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.

Computation of Primary Insurance Amount

Sec. 215. For the purposes of this title—

(a) Subject to the conditions specified in subsections (b), (c), and (d) of this section, the primary insurance amount of an insured individual shall be whichever of the following is the largest: 206

(1) The amount in column IV on the line on which in column III of the following table appears his average monthly wage (as

determined under subsection (b));

(2) The amount in column IV on the line on which in column II of the following table appears his primary insurance amount (as determined under subsection (c));

(3) The amount in column IV on the line on which in column I of the following table appears his primary insurance benefit

(as determined under subsection (d)); or

(4) In the case of an individual who was entitled to a disability insurance benefit for the month before the month in which he died, became entitled to old-age insurance benefits, or attained age 65, the amount in column IV which is equal to the primary insurance amount upon which such disability insurance benefit is based. 207 208

²⁰⁶ See sec. 205(c) of P.L. 86–778, p. 499, vol. II, for method of computing primary insurance amount where insured individual died prior to 1940.

²⁰⁷ See also sec. 101(h) of P.L. 85–840, p. 493, vol. II, for primary insurance amount for certain disability insurance beneficiaries and sec. 303(g) of P.L. 86–778, p. 500, vol. II, for conditions under which sec. 215, as in effect prior to the 1960 amendments, continues to apply. See also sec. 301(e) of P.L. 89–97 on p. 511, vol. II.

²⁰⁸ See P.L. 90–248, sec. 101(f), p. 517, vol. II, for special provisions concerning individuals entitled to a disability insurance benefit for January 1968, and who either became entitled to old-age insurance benefits in February 1968, or died in February 1968.

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS 209

		П		Ш	IV	V
(Primary insurance benefit under 1939 Act, as modified)		Or his primary insurance amount under 1965 Act) Or his primary insurance amount (as determined	(Average monthly wage) Or his average monthly wage (as determined under subsec. (b)) is—		The amount referred to in the preceding paragraphs of	(Maximum family benefits) And the maximum amount of benefits payable (as provide in sec. 203(a)) on the basis of his
If an individual's primary insur- ance benefit (as determined under subsec. (d)) is—						
At least—	But not more than—	under subsec. (c)) is—	At least—	But not more than—	this subsection shall be—	wages and self- employment income shall be—
	\$15.60	\$48.00		\$74	\$55, 00	\$82, 50
\$15. 61 16. 21 16. 85 17. 61 18. 44 19. 25 20. 01 20. 65 21. 29 22. 29 22. 29 23. 39 22. 29 23. 45 23. 77 24. 61 25. 91 26. 95 27. 47 28. 01 28. 69 29. 69 29. 69 30. 93 31. 37 32. 01 32. 61 33. 89 34. 51 35. 01 35. 61 37. 09 38. 21 39. 69 40. 34 41. 13 41. 77 42. 45 43. 21 43. 77 44. 45 44. 89	\$15. 60 16. 20 16. 84 17. 60 18. 40 19. 24 20. 00 20. 64 21. 28 21. 28 22. 28 22. 28 23. 44 23. 76 24. 20 24. 60 25. 00 25. 48 25. 92 26. 40 27. 46 28. 00 28. 68 29. 25 30. 36 31. 36 32. 00 33. 20 33. 20 33. 20 33. 36 35. 80 36. 40 37. 60 37. 60 37. 60 38. 20 39. 12 39. 68 40. 33 41. 176 42. 44 43. 84 44. 88 45. 60	\$48, 00 or less 49, 00 51, 00 55, 00 55, 00 55, 00 55, 00 55, 00 55, 00 56, 00 57, 00 58, 00 61, 00 62, 10 63, 20 64, 20 65, 30 66, 40 67, 50 68, 50 67, 70 71, 70 71, 70 71, 70 71, 70 72, 28 73, 90 74, 90 76, 00 77, 10 78, 20 79, 20 80, 30 81, 40 82, 40 83, 50 86, 60 87, 80 88, 90 91, 00 92, 10 93, 10 94, 20 95, 30 97, 40 98, 50 99, 60 101, 70 102, 80 103, 80 104, 90 105, 00 107, 00 111, 30 112, 40 111, 30 111, 30 111, 30 111, 30 111, 30 111, 30 111, 50 116, 70 117, 70 117, 70 118, 80 119, 90 121, 00 121, 00 121, 00 121, 00 121, 00 122, 10 123, 10 144, 50 156, 10 166, 00 177, 10 178, 20 179, 40 188, 90 199, 60 101, 70 102, 80 103, 80 104, 90 105, 90 106, 90 107, 90 108, 10 119, 90 110, 90 111, 30 111, 30 111, 30 111, 30 111, 30 111, 50 1116, 70 117, 70 117, 70 118, 80 119, 90 121	\$75 777 79 81 82 84 86 88 90 91 93 95 97 98 100 102 103 105 107 108 114 119 123 128 133 137 142 147 151 156 161 165 170 175 184 189 194 198 208 217 222 226 231 236 240 245 259 264 268 273 278 282 287 296 301 306 315	76 78 80 81 81 83 85 87 89 90 99 94 94 96 97 99 101 102 104 106 107 109 113 118 122 127 132 136 141 145 155 160 164 169 174 178 183 188 193 197 202 207 211 216 221 225 230 235 239 244 249 249 253 258 239 244 249 253 258 258 267 277 281 286 291 295 300 305 309 314 319	\$55, 40 56, 50 57, 70 58, 80 59, 90 61, 10 62, 30 64, 50 65, 60 65, 60 67, 80 69, 90 70, 20 71, 50 72, 60 73, 80 75, 10 78, 50 78, 70 79, 90 81, 10 82, 30 83, 60 84, 70 85, 90 87, 50 88, 40 89, 50 99, 30 90, 80 99, 30 101, 60 102, 90 104, 10 105, 20 107, 70 108, 90 110, 50 101, 50 102, 90 104, 10 105, 20 107, 70 108, 90 110, 50 101, 50 101, 50 102, 90 104, 10 105, 20 107, 70 108, 90 110, 50 121, 30 121, 30 122, 20 123, 40 124, 70 125, 80 127, 10 128, 30 134, 30 134, 30 135, 80	\$82, 50 83, 10 84, 80 86, 60 88, 20 91, 70 93, 30 95, 00 96, 80 98, 40 100, 10 101, 70 103, 50 105, 30 107, 30 110, 70 111, 70 112, 70 114, 50 116, 30 118, 10 119, 90 121, 70 123, 50 125, 40 127, 10 128, 90 130, 80 131, 30, 80 134, 40 145, 40 150, 40 151, 60 161, 60 165, 60 168, 80 172, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 80 176, 60 181, 00 184, 00 184, 00 184, 00 185, 60 181, 60 181, 60 183, 80 180, 00 181, 00 181, 00 182, 60 183, 00 184, 00 185, 60 186, 80 177, 80 177, 80 178, 80 179, 80 170, 80 170, 80 170, 80 170, 80 170, 80 170, 80

²⁰⁹ Public Law 90–248, sec. 101(a), deleted the former table and inserted the revised table as shown. Applicable with respect to monthly benefits under title II of the act for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968. For benefit table as it appeared prior to enactment of Public Law 90–248, see p. 684, vol. II.

TABLE FOR DETERMINING PRIMARY INSURANCE AMOUNT AND MAXIMUM FAMILY BENEFITS 210—Continued

	1	H		111	IV	٧
(Primary insurance benefit under 1939 Act, as modified) If an individual's primary insur- ance benefit (as determined under subsec. (d)) is—		(Primary insur- ance amount under 1965 Act)	(Average monthly wage) Or his average monthly wage (as determined under subsec. (b)) is—		(Primary insurance amount) The amount referred to in the preceding paragraphs of	(Maximum family benefits) And the maximum amount of benefits payable (as provided in sec. 203(a)) on the basis of his
		Or his primary insurance amount (as determined				
At least—	But not more than—	under subsec. (c)) is—	At least—	But not more than—	this subsection shall be—	wages and self- employment income shall be—
		\$122, 00 123, 10 124, 20	\$338 343 348	\$342 347 351	\$137.90 139.10 140.40	\$273.60 277.60 280.80
		125, 20 126, 30	352	356	141.50 142.80	284, 80 288, 80
		127. 40	357 362	361 365	144.00	292, 00
		128, 40	366	370	145.10	296. 00
		129, 50 130, 60	371 376	375 379	146. 40 147. 60	300, 00 303, 20
		131.70	380	384	148.90	307, 20
		132.70 133.80	385 390	389 393	150, 00 151, 20	311. 20 314. 40
		134.90	394	393	152, 50	318.40
		135.90 137.00	399 404	403 407	153.60 154.90	322. 40 325. 60
		138, 00	408	412	156.00	329 60
		139.00 140.00	413 413	417 421	157. 10 158. 20	333. 60 336. 80
		141.00	422	42i 42ò	159. 40	340, 80
		142.00 143.00	427	431	160. 50	344. 80
		144.00	432 437	436 440	161. 60 162. 80	348. 80 350. 40
		145.00	441	445	163, 90	352.40
		143.00 147.00	446 451	450 454	165. 00 166. 20	354. 40 356. 00
		143.00	455	459	167.30	358.00
		149.00 150.00	460 465	464 463	168.40 169.50	360.00 361.60
		151.00	469	473	170.70	363.60
		152.00 153.00	474 479	478 482	171. 80 172. 90	365, 60 367, 20
		154.00	483	487	174.10	369, 20
		155, 00 153, 00	488 493	492 496	175.20 176.30	371, 20 372, 80
		157.00	497	501	177.50	374.80
		153.00 159.00	502 507	506 510	178.60 179.70	376. 80 378. 40
		130.00	511	515	180.80	380.40
		161.00 162.00	516 521	520 524	182. 00 183. 10	382. 40 384. 00
		163.00	525	529	184. 20	386.00
		164, 00 165, 00	530 535	534 538	185.40 186.50	388. 00 389. 60
		166.00	539	543	187.60	391.60
		167.00 168.00	544 549	548 553	188.80 189.90	393.60 395.60
		103,00	554	558	191.00	396.80
			557 561	560 563	192.00 193.00	398. 40 399. 60
			564	567	194, 00	401.20
			568 571	570 574	195.00	402.40 404.00
			575	577	196.00 197.00	404. 00 405. 20
			578 582	581 584	198.00 199.00	406. 80 408. 00
			585	588	200.00	409.60
			589 592	591 595	201. 00 202. 00	410.80 412.40
			596	598	203.00	413.60
			599 603	602 605	204.00	415.20 416.40
			606	609	206.00	418. 00
			610	612 616	207.00	419.20
			613 617	620	202, 00 203, 00 204, 00 205, 00 206, 00 207, 00 208, 00 209, 00	422. 40
			621	623	210.00	423.60
			617 621 624 628 631	627 630	210. 00 211. 00 212. 00 213. 00 214. 00 215. 00	413. 60 415. 20 416. 40 418. 00 419. 20 420. 80 422. 40 423. 60 425. 20 426. 40
			631	634	213.00	428. 00 429. 20
			638	637 641	214.00	429, 20 430, 80
			642 645 649	644	216. 00 217. 00 218. 00	430, 80 432, 00 433, 60 434, 40
			645	648 650	217.00	433.60

²¹⁰ See footnote 209, this title.

Average Monthly Wage

(b) (1) For the purposes of column III of the table appearing in subsection (a) of this section, an individual's "average monthly wage" shall be the quotient obtained by dividing-

(A) the total of his wages paid in and self-employment income credited to his "benefit computation years" (determined

under paragraph (2)), by

(B) the number of months in such years.
(2) (A) The number of an individual's "benefit computation years" shall be equal to the number of elapsed years (determined under paragraph (3) of this subsection), reduced by five; except that the number of an individual's benefit computation years shall in no case be less than two.

(B) An individual's "benefit computation years" shall be those computation base years, equal in number to the number determined under subparagraph (A), for which the total of his wages and self-employ-

ment income is the largest.

(C) For purposes of subparagraph (B), "computation base years" include only calendar years in the period after 1950 and prior to the earlier of the following years—

(i) the year in which occurred (whether by reason of section 202(j) (1) or otherwise) the first month for which the individual

was entitled to old-age insurance benefits, or

(ii) the year succeeding the year in which he died.

Any calendar year all of which is included in a period of disability

shall not be included as a computation base year.

(3) For purposes of paragraph (2), the number of an individual's elapsed years is the number of calendar years after 1950 (or, if later, the year in which he attained age 21) and before-

(A) in the case of a woman, the year in which she died or, if it occurred earlier but after 1960, the year in which she attained

age 62,

(B) in the case of a man who has died, the year in which he died or, if it occurred earlier but after 1960, the year in which he attained age 65, or

(C) in the case of a man who has not died, the year occurring

after 1960 in which he attained (or would attain) age 65.

For purposes of the preceding sentence, any calendar year any part of which was included in a period of disability shall not be included in such number of calendar years.

(4) The provisions of this subsection shall be applicable only in the

case of an individual—

(A) who becomes entitled, after January 1968, to benefits under

section 202(a) or section 223; or

(B) who dies after January 1968 without being entitled to benefits under section 202(a) or section 223; or

(C) whose primary insurance amount is required to be recomputed under subsection (f)(2).²¹¹

(5) [Repealed.] ²¹²

Primary Insurance Amount Under 1965 Act 213 214

(c) (1) For the purposes of column II of the table appearing in subsection (a) of this section, an individual's primary insurance amount shall be computed on the basis of the law in effect prior to the enact-

ment of the Social Security Amendments of 1967.

(2) The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223 before the month of February 1968, or who died before such month.

Primary Insurance Benefit Under 1939 Act

(d) (1) For purposes of column I of the table appearing in subsection (a) of this section, an individual's primary insurance benefit shall

be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) (but without regard to paragraph (4) thereof) of this section, except that for purposes of paragraph (2) (C) and (3) of such subsection, 1936 shall be used instead of 1950.

(A) who becomes entitled, after December 1965, to benefits under section 202(a)

(A) who becomes entitled, after December 1965, to benefits under section 202(a) or section 223; or
(B) who dies after December 1965 without being entitled to benefits under section 202(a) or section 223; or
(C) whose primary insurance amount is required to be recomputed under subsection (f)(2), as amended by the Social Security Amendments of 1965; except that it shall not apply to any such individual for purposes of monthly benefits for months before January 1966."

212 P.L. 90-248, sec. 101(c)(2), repealed paragraph (5) of section 215(b), applicable with respect to monthly benefits under title II of the Social Security Act for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968. Prior to such amendment, this paragraph read as follows:

the case of deaths occurring after January 1968. Prior to such amendment, this paragraph read as follows:

"(5) For the purposes of column III of the table appearing in subsection (a) of this section, the provisions of this subsection, as in effect prior to the enactment of the Social Security Amendments of 1965, shall apply—

(A) in the case of an individual to whom the provisions of this subsection are not made applicable by paragraph (4), but who, on or after the date of the enactment of the Social Security Amendments of 1965 and prior to 1966, met the requirements of this paragraph or paragraph (4), as in effect prior to such enactment, and

(B) with respect to monthly benefits for months before January 1966, in the case of an individual to whom the provisions of this subsection are made applicable by paragraph (4)."

paragraph (4)."

213 P.L. 90-248, sec. 101(d), amended section 215(c) in its entirety. Applicable as indicated in footnote 210, of this title. Prior to such amendment, this section read as

cated in footnote 210, of this title. Frior to such amendate, follows:

"(c)(1) For the purposes of column II of the table appearing in subsection (a) of this section, an individual's primary insurance amount shall be computed as provided in, and subject to the limitations specified in, (A) this section as in effect prior to the enactment of the Social Security Amendments of 1965, and (B) the applicable provisions of the Social Security Amendments of 1966.

(2) The provisions of this subsection shall be applicable only in the case of an individual who became entitled to benefits under section 202(a) or section 223 before the date of enactment of the Social Security Amendments of 1965 or who died before such date."

24 See P.L. 90–248, sec. 155(a) (8), page 520, vol. II, for special provisions concerning individuals who became entitled to a monthly benefit after January 2, 1968, and before February 1968, and whose benefit was based on a primary insurance amount determined by applying sec. 215(d), as amended by P.L. 90–248.

²¹¹ P.L. 90-248, sec. 101(c) (1), amended section 215(b), paragraph (4), in its entirety. Applicable with respect to monthly benefits under title II of the Act for months after January 1968 and with respect to lump-sum death payments under such title in the case of deaths occurring after January 1968. Prior to such amendment, this paragraph read as follows:

"(4) The provisions of this subsection shall be applicable only in the case of an individual—

(B) For purposes of subparagraphs (B) and (C) of subsection (b) (2), an individual whose total wages prior to 1951 (as defined in subparagraph (C) of this subsection)-

(i) do not exceed \$27,000 shall be deemed to have been paid such wages in equal parts in nine calendar years after 1936

and prior to 1951;

(ii) exceed \$27,000 and are less than \$42,000 shall be deemed to have been paid (I) \$3,000 in each of such number of calendar years after 1936 and prior to 1951 as is equal to the integer derived by dividing such total wages by \$3,000, and (II) the excess of such total wages over the product of \$3,000 times such integer, in an additional calendar year in such period; or

(iii) are at least \$42,000 shall be deemed to have been paid \$3,000 in each of the fourteen calendar years after 1936 and

prior to 1951.

(C) For the purposes of subparagraph (B), "total wages prior to 1951" with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Secretary, (ii) wages deemed paid prior to 1951 to such individual under section 217, and (iii) compensation under the Railroad Retirement Act of 1937 prior to 1951 creditable to him pursuant to this title.

(D) The individual's primary insurance benefit shall be 45.6 per centum of the first \$50 of his average monthly wage as computed under this subsection, plus 11.4 per centum of the next \$200

of such average monthly wage. 215

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing

prior to 1951 is a quarter of coverage;

(B) except as provided in paragraph (3), who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C) (i) who becomes entitled to benefits under section 202(a) or 223 after the date of the enactment of the Social Security

Amendments of 1967, or

²¹⁵ P.L. 90-248, sec. 155(a) (1), amended section 215(d), paragraph (1), in its entirety. Not applicable with respect to monthly benefits for any month prior to January 1967. Prior to such amendment, this paragraph read as follows:

"(d) (1) For the purposes of column I of the table appearing in subsection (a) of this section, an individual's primary insurance benefit shall be computed as provided in this title as in effect prior to the enactment of the Social Security Act Amendments of 1950, except that—

(A) In the computation of such henefit, such individual's average monthly wage

(B) For purposes of such computation, the date he became entitled to old-age insurance benefits shall be deemed to be the date he became entitled to primary in-

surance benefits.

⁽A) In the computation of such benefit, such individual's average monthly wage shall (in lieu of being determined under section 209(f) of this title as in effect prior to the enactment of such amendments) be determined as provided in subsection (b) of this section (but without regard to paragraphs (4) and (5) thereof), except that for the purposes of paragraphs (2)(C) and (3) of subsection (b), 1936 shall be used instead of 1950 instead of 1950.

⁽C) The 1 per centum addition provided for in section 209(e)(2) of this Act as in effect prior to the enactment of the Social Security Act Amendments of 1950 shall be applicable only with respect to calendar years prior to 1951, except that any wages paid in any year prior to such year all of which was included in a period of disability shall not be counted.

(D) The provisions of subsection (e) shall be applicable to such computation."

(ii) who dies after such date without being entitled to benefits under section 202(a) or 223, or

(iii) whose primary insurance amount is required to be recom-

puted under section 215(f)(2).²¹⁶

(3) The provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1967 shall be applicable in the case of an individual—

(A) who attained age 21 after 1936 and prior to 1951, or

(B) who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 220.217

Certain Wages and Self-Employment Income Not To Be Counted

(e) For the purposes of subsections (b) and (d)—

(1) in computing an individual's average monthly wage there shall not be counted the excess over \$3,600 in the case of any calendar year after 1950 and before 1955, the excess over \$4,200 in the case of any calendar year after 1954 and before 1959, the excess over \$4,800 in the case of any calendar year after 1958 and before 1966, the excess over \$6,600 in the case of any calendar year after 1965 and before 1968, and the excess over \$7,800 in the case of any calendar year after 1967 218 of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 212); and

(2) if an individual's average monthly wage computed under subsection (b) or for the purposes of subsection (d) is not a multiple of \$1, it shall be reduced to the next lower multiple of \$1.

Recomputation of Benefits

(f) (1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 217(b).219

(2) If an individual has wages or self-employment income for a year after 1965 for any part of which he is entitled to old-age insur-

individual-

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;
(B) who meets the requirements of any of the subparagraphs of paragraph (4) of subsection (b) of this section; and
(C) who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before

1951."

²¹⁶ P.L. 90-248, sec. 155(a) (2), amended section 215(d), paragraph (2), in its entirety. Not applicable with respect to monthly benefits for any month prior to January 1967. Prior to such amendment, this paragraph read as follows:

"(2) The provisions of this subsection shall be applicable only in the case of an

^{1951.&}quot;

217 P.L. 90-248, sec. 155(a) (3), amended section 215(d), paragraph (3), in its entirety. Prior to such amendment, this paragraph read as follows:

"(3) The provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1965 shall be applicable in the case of an individual who meets the requirements of subsection (b) (5) (as in effect after such enactment)."

28 P.L. 90-248, sec. 108(a) (4), deleted "and the excess over \$6,600 in the case of any calendar year after 1965" and inserted: "the excess over \$6,600 in the case of any calendar year after 1965 and before 1968, and the excess over \$7,800 in the case of any calendar year after 1967".

219 See also sec. 102(e) (5) of the Social Security Amendments of 1954, p. 484, vol. II.

ance benefits, the Secretary shall, at such time or times and within such period as he may by regulations prescribe, recompute such individual's primary insurance amount with respect to each such year. Such recomputation shall be made as provided in subsection (a) (1) and (3) as though the year with respect to which such recomputation is made is the last year of the period specified in subsection (b) (2) (C). A recomputation under this paragraph with respect to any year shall be effective- 220

(A) 221 in the case of an individual who did not die in such year, for monthly benefits beginning with benefits for January of the following

year; or

(B) 222 in the case of an individual who died in such year (including any individual whose increase in his primary insurance amount is attributable to compensation which, upon his death, is treated as remuneration for employment under section 205(o)), for monthly bene-

fits beginning with benefits for the month in which he died.²²³

(3) In the case of any individual who became entitled to old-age insurance benefits in 1952 or in a taxable year which began in 1952 (and without the application of section 202(j)(1)), or who died in 1952 or in a taxable year which began in 1952 but did not become entitled to such benefits prior to 1952, and who had self-employment income for a taxable year which ended within or with 1952 or which began in 1952, then upon application filed by such individual after the close of such taxable year and prior to January 1961 or (if he died without filing such application and such death occurred prior to January 1961) by a person entitled to monthly benefits on the basis of such individual's wages and self-employment income, the Secretary shall recompute such individual's primary insurance amount. Such recomputation shall be made in the manner provided in the preceding subsections of this section (other than subsection (b) (4) (A)) for computation of such amount, except that (A) the self-employment income closing date shall be the day following the quarter with or within which such taxable year ended, and (B) the self-employment income for any subsequent taxable year shall not be taken into account. Such recomputation shall be effective (A) in the case of an application filed by such individual, for and after the first month in which he became entitled to old-age insurance benefits, and (B) in the case of an application filed

²²⁰ P.L. 90-248, sec. 155(a) (4), amended so much of sec. 215(f) (2) as preceded former subparagraph (E), and P.L. 90-248, sec. 155(a) (5), redesignated former subparagraphs (E) and (F) as subparagraphs (A) and (B) respectively. Applicable with respect to recomputations under sec. 215(f) (2) of the Social Security Act after January 2, 1968. Prior to these amendments, the amended portion of sec. 215(f) (2) read:

"With respect to each year—

(A) which begins after December 31, 1964, and
(B) for any part of which an individual is entitled to old-age insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulations prescribe, recompute the primary insurance amount of such individual. Such recomputation shall be made—

(C) as provided in subsection (a) (1) and (3) if such year is either the year in which he becme entitled to such old-age insurance benefits or the year preceding such year.

year, or

(D) as provided in subsection (a) (1) in any other case;
and in all cases such recomputation shall be made as though the year with respect to which such recomputation is made is the last year of the period specified in paragraph (2) (C) of subsection (b). A recomputation under this paragraph with respect to any year shall be effective—" effective-

effective—"
221 See footnote 220, of this title.
222 See footnote 220, of this title.
223 This reference is to a provision which had prohibited inclusion of self-employment income in any taxable year ending in or after the month in which the individual died or became entitled to old-age insurance benefits, whichever first occurred. This provision was repealed by the Social Security Amendments of 1954 (P.L. 761, 83d Cong.).

by any other person, for and after the month in which such person who filed such application for recomputation became entitled to such monthly benefits. No recomputation under this paragraph pursuant to an application filed after such individual's death shall affect the amount of the lump-sum death payment under subsection (i) of section 202, and no such recomputation shall render erroneous any such payment certified by the Secretary prior to the effective date of the recomputation.224

(4) Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained age 65, the Secretary shall recompute his primary insurance amount as provided in subsection (a) as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b) (2) shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b) (3) shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died. 226

Rounding of Benefits

(g) The amount of any primary insurance amount and the amount of any monthly benefit computed under section 202 or 223 which (after reduction under section 203(a) and deductions under section 203(b)) is not a multiple of \$0.10 shall be raised to the next higher multiple

of \$0.10.

(h) (1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, United States Code, 227 remuneration paid for services to which the provisions of section 210 (1) (1) of this Act are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this title, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Civil Service Commission certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5, United States Code, 228 on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on

²²⁴ See also secs. 302(f)(2)-(4) of P.L. 89-97 on p. 511, vol. II.
²²⁶ See also sec. 303(j) of P.L. 86-778, p. 502, vol. II.
²²⁷ P.L. 90-248, sec. 155(a)(6), added new paragraph (5). Applicable with respect to individuals who die after January 2. 1968.
²²⁷ P.L. 90-248, sec. 403(b)(1), deleted "of the Civil Service Retirement Act" and inserted "of subchapter III of chapter 83 of title 5, United States Code".
²²⁸ P.L. 90-248, sec. 403(b)(2), deleted "under the Civil Service Retirement Act" and inserted "under subchapter III of chapter 83 of title 5, United States Code".

behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

Other Definitions

Sec. 216. For the purposes of this title—

(a) [Repealed.]

Wife

(b) The term "wife" means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

Widow

(c) The term "widow" (except when used in section 202(i)) means the surviving wife of an individual, but only if (1) she is the mother of his son or daughter, (2) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (4) she was married to him at the time both of them legally adopted a child under the age of eighteen, (5) she was married to him for a period of not less than nine months 229 immediately prior to the day on which he died, or (6) in the month prior to the month of her marriage to him (A) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

²²⁸ P.L. 90-248, sec. 156(a), deleted "one year" and inserted "nine months". Applicable with respect to monthly benefits under title II of the Act for months after January 1968, but only on the basis of applications filed in or after January 1968.

Divorced Wives; Divorce

(d) (1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 20 years immediately before the date the divorce became effective.

(2) The term "surviving divorced wife" means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 20 years immediately before the date

the divorce became effective.

(3) The term "surviving divorced mother" means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The terms "divorce" and "divorced" refer to a divorce a vinculo

matrimonii.

Child

(e) The term "child" means (1) the child or legally adopted child of an individual, and (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding 230 the day on which such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was at the time of such individual's death living in such individual's household and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) the date of enactment of the Social Security Amendments of 1958; 231 except that this sentence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a

²³⁰ P.L. 90–248, sec. 156(b), inserted "not less than nine months immediately preceding". Applicable as indicated in footnote 229, of this title.

²³¹ P.L. 90–248, sec. 150(a), deleted "before the end of two years after the day on which such individual died or the date of enactment of this Act" and inserted: "only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) the date of enactment of the Social Security Amendments of 1958". Applicable with respect to monthly benefits payable under title II of the Act for months after January 1968, but only on the basis of an application filed in or after January 1968.

marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h) (1) (B), would have been a valid marriage.

Husband

(f) The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

Widower

(g) The term "widower" (except when used in section 202(i)) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months 232 immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 5 of the Railroad Retirement Act of 1937, as amended.

Determination of Family Status

(h) (1) (A) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this title if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled

²³² P.L. 90-248, sec. 156(c), deleted "one year" and inserted "nine months". Applicable with respect to monthly benefits under title II of the Act for months after January 1968, but only on the basis of applications filed in or after January 1968.

in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died. If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, hus-

band, widow, or widower of such insured individual.

(B) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual, but it is established to the satisfaction of the Secretary that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application, then, for purposes of subparagraph (A) and subsections (b), (c), (f), and (g), such purported marriage shall be deemed to be a valid marriage. The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii) if the Secretary determines, on the basis of information brought to his attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage. The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g) of section 202, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife, widow, husband, or widower of such insured individual but for this subparagraph, shall end with the month before the month (i) in which the Secretary certifies, pursuant to section 205(i), that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 202, in which such applicant entered into a marriage, valid without regard to this subparagraph, with a person other than such insured individual. For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (i) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or

its dissolution, or (ii) resulting from a defect in the procedure fol-

lowed in connection with such purported marriage.

(2) (A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this title, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1) (B), would have been a

valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2), shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such

entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter,

(II) has been decreed by a court to be the father of

the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgment, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained age

65, whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of the applicant at the time such insured individual became entitled to benefits or attained age 65, whichever first occurred;

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he was entitled to old-

age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his son or daughter.

(II) has been decreed by a court to be the father of

the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his son or daughter,

and such acknowledgment, court decree, or court order was made before such insured individual's most recent period of

disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the father of the applicant and was living with or contributing to the support of that applicant at the time such period of disability began;

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his son or daughter,

(II) had been decreed by a court to be the father of

the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his son or daughter,

and such acknowledgment, court decree, or court order was

made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

Disability; Period of Disability

(i) (1) Except for purposes of sections 202 (d), 202 (e), 202 (f), 233 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of correcting lens. 234 An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. 235 The provisions of paragraphs (2) (A), (3), (4), and (5) of section 223 (d) shall be applied for purposes of determining whether

²³³ P.L. 90-248, sec. 104(d)(2), inserted "202(e), 202(f).". Applicable with respect to monthly benefits under title II of the Act for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

²³⁴ P.L. 90-248, sec. 172(a), inserted "20/200 or less in the better eye with the use of correcting lens" in lieu of "5/200 or less in the better eye with the use of a correcting lens", applicable with respect to benefits under section 223 for months after January 1968 based on applications filed after January 2, 1968, and with respect to disability determinations under section 216(i) based on applications filed after January 2, 1968.

²⁵⁵ P.L. 90-248, sec. 172(b), inserted this sentence in lieu of "An eye in which the visual field is reduced to five degrees or less concentric contraction shall be considered for the purpose of this paragraph as having a central visual acuity of 5/200 or less." Applicable with respect to benefits under section 223 for months after January 1968 based on applications filed after January 2, 1968, and with respect to disability determinations under section 216(i) based on applications filed after January 2, 1968.

an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. 236 Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2) (A) The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than 6 full calendar months' duration or such individual was entitled to benefits

under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the age of 65.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragrah (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains age 65, or (ii) the second month

following the month in which the disability ceases.

(E) Except as is otherwise provided in subparagraph (F), no 237 application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraphs (B) and (E)) shall be accepted as

an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after the month in which the Social Security Amendments of 1967 is enacted, such

²³⁶ P.L. 90-248, sec. 158(d), inserted this sentence in lieu of "An individual shall not be considered to be under a disability unless he furnishes such proof of the existence thereof as may be required." Effective with respect to applications for disability insurance benefits under section 223 of the Act, and for disability determinations under section 216(i) of such Act, filed—(1) in or after January 1968, or (2) before January 1968 if the applicant was alive in January 1968 and if—(A) notice of the final decision of the Secretary of Health, Education, and Welfare was not given to the applicant before January 1968 or (B) the notice referred to in subparagraph (A) was given before January 1968 but a civil action with respect to such final decision is commenced under section 205(g) of the Act (whether before, in, or after January 1968) and the decision in such civil action had not become final before January 1968.

²⁵⁷ P.L. 90-248, sec. 111(a), deleted "No" and inserted "Except as is otherwise provided in subparagraph (F), no". No title II benefits for any month before January 1968 are payable or may be increased by reason of the enactment of section 111(a).

application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Secretary finds in accordance with regulations prescribed by him that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of

1967 is enacted,

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of

1967 is enacted,

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before the month in which the Social Security Amendments of 1967 is enacted, and (2) not more than 36 months after the

month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.²³⁸

(G) ²³⁹ An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application only if the applicant satisfies the requirements for a period of disability before the Secretary makes a final decision on the application. If upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed on such first day.

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2) (C) are satisfied by an individual with respect to any quar-

ter only if-

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 (if a woman) or age 65 (if a man) and filed application for benefits under section 202(a) on the first day of such quarter; and

(B) (i) he had not less than 20 quarters of coverage during

the 40-quarter period which ends with such quarter, or

²³⁸ P.L. 90-248, sec. 111(a), added new subparagraph (F) after redesignating former subparagraph (F) as subparagraph (G). No title II benefits for any month before January 1968 are payable or may be increased by reason of the enactment of section 111(a), ²³⁹ See footnote 238, this title.

⁹⁰⁻²⁷⁵ O-68-pt. 1-9

(ii) if such quarter ends before he attains (or would attain) age 31 240 not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter

were quarters of coverage; except that the provisions of subparagraph (A) of this paragraph shall not apply in the case of an individual with respect to whom a period of disability would, but for such subparagraph, begin before 1951. For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

(4) [Repealed.]

Periods of Limitations Ending on Nonwork Days

(j) Where this title, any provision of another law of the United States (other than the Internal Revenue Code of 1954) relating to or changing the effect of this title, or any regulation issued by the Secretary pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this title or is necessary to establish or protect any rights under this title, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Secretary pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this title may (pursuant to section 202(j) (1) or 223(b)) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this title may (pursuant to section 202(j) (2) or 223(b)) be accepted as such.

Waiver of Nine-Month Requirement for Widow, Stepchild, or Widower in Case of Accidental Death or in Case of Serviceman Dying in Line of Duty 241

(k) The requirement in clause (5) of subsection (c) or clause (5) of subsection (g) that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) that the stepchild of a deceased individual have

²⁴⁰ P.L. 90–248, sec. 105(a), deleted "and he is under a disability by reason of blindness (as defined in paragraph (1))." Applicable only with respect to applications for disability determinations filed under section 216(i) in or after January 1968.

²⁴¹ P.L. 90–248, sec. 156(d), added new subsection (k). Applicable with respect to monthly benefits under title II of the Act for months after January 1968, but only on the basis of applications filed in or after January 1968.

been such stepchild for not less than nine months imediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if his death—

(1) is accidental, or

(2) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 210(1)(2)), and he would satisfy such requirement if a three-month period were substituted for the nine-month period; except that this subsection shall not apply if the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1) of the preceding sentence, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

Benefits in Case of Veterans

Sec. 217. (a) (1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of \$160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would

be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality. The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by \$0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3).

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instru-

mentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of

this subsection.

(b) (1) Any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 215(c). Notwithstanding section 215(d), the primary insurance benefit (for purposes of section 215(c)) of such veteran shall be determined as provided in this title as in effect prior to the enactment of this section, except that the 1 per centum addition provided for in section 209(e) (2) of this Act as in effect prior to the enactment of this section shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would

be payable without its application;

(B) any pension or compensation is determined by the Veterans' Administration to be payable by it on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active

military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent

to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary of Health, Education, and Welfare shall thereupon report such decision to the Veterans' Administration. If the Veterans' Administration

in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payment theretofore certified by the Secretary of Health, Education, and Welfare on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38, United States Code) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary of Health, Education, and Welfare, and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

(c) In the case of any World War II veteran to whom subsection (a) is applicable, proof of support required under section 202(h) may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, which-

ever is the later.

(d) For the purposes of this section—

(1) The term "World War II" means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term "World War II veteran" means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e) (1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this title on the basis of the wages and self-employment income of any veteran (as defined in paragraph (4)), and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of \$160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be,

would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947,

and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such

agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by \$0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3). In the case of monthly benefits under this title for months after December 1956 (and any lump-sum death payment under this title with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 210(1)(1) are applicable, wages which would, but for the provisions of clause (B), be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast Guard, Coast and Geodetic Survey or Public Health Service.

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran,

such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term "veteran" means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment

for a military or naval offense.

(f) (1) In any case where a World War II veteran (as defined in subsection (d)(2)) or a veteran (as defined in subsection (e)(4)) has died or shall hereafter die, and his widow or child is entitled under subchapter III of chapter 83 of title 5, United States Code,²⁴² to an annuity in the computation of which his active military or naval service was included, clause (B) of subsection (a) (1) or clause (B) of subsection (e) (1) shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 202 which is based on his wages and self-employment income; except that no such widow or child shall be entitled under section 202 to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such widow or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Civil Service Commission certifies to the Secretary of Health, Education, and Welfare that (by reason of such waiver) no further annuity will be paid to such widow or child under such subchapter III 243 on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a widow waives her right to receive such annuity such waiver shall constitute a waiver on her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the widow and all children, or, if there is no widow, all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5, United States

Code,244 based on such veteran's military or civilian service.

(g) (1) In September 1965, and in every fifth September thereafter up to and including September 2010, the Secretary shall determine the amount which, if paid in equal installments at the beginning of each fiscal year in the period beginning-

(A) with July 1, 1965, in the case of the first such determina-

tion, and

(B) with the July 1 following the determination in the case of all other such determinations,

²⁴² P.L. 90–248, sec. 403(c) (1) (A), inserted "subchapter III of chapter 83 of title 5, United States Code," in lieu of "the Civil Service Retirement Act of May 29, 1930, as amended.".

²⁴³ P.L. 90–248, sec. 403(c) (1) (B), inserted "such subchapter III" in lieu of "such Act of May 29, 1930, as amended.".

²⁴⁴ P.L. 90–248, sec. 403(c) (2),inserted "subchapter III of chapter 83 of title 5, United States Code," in lieu of "the Civil Service Retirement Act of May 29, 1930, as amended".

and ending with the close of June 30, 2015, would accumulate, with interest compounded annually, to an amount equal to the amount needed to place each of the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position at the close of June 30, 2015, as he estimates they would otherwise be in at the close of that date if section 210 of this Act as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted. The rate of interest to be used in determining such amount shall be the rate determined under section 201(d) for public-debt obligations which were or could have been issued for purchase by the Trust Funds in the June preceding the September in which such determination is made.

(2) There are authorized to be appropriated to the Trust Funds

and the Federal Hospital Insurance Trust Fund—

(A) for the fiscal year ending June 30, 1966, an amount equal to the amount determined under paragraph (1) in September

1965, and

(B) for each fiscal year in the period beginning with July 1, 1966, and ending with the close of June 30, 2015, an amount equal to the annual installment for such fiscal year under the most recent determination under paragraph (1) which precedes such

fiscal year.

(3) For the fiscal year ending June 30, 2016, there is authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund such sums as the Secretary determines would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the same position in which they would have been at the close of June 30, 2015, if section 210 of this Act as in effect prior to the Social Security Act Amendments of 1950, and this section, had not been enacted.

(4) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund annually, as benefits under this title and part A of title XVIII are paid after June 30, 2015, such sums as the Secretary determines to be necessary to meet the additional costs, resulting from subsections (a), (b), and (e), of such

benefits (including lump-sum death payments).

Gratuitous Wage Credits for American Citizens Who Served in the Armed Forces of Allied Countries

(h) (1) For the purposes of this section, any individual who the

Secretary finds-

(Å) served during World War II (as defined in subsection (d)(1)) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8,

1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the

day of, and was domiciled in the United States on the day of, such

entrance into such active service; and

(E) (i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

shall be considered a World War II veteran (as defined in subsection (d) (2)) and such service shall be considered to have been performed

in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 202 (f) or (h) may be filed at any time prior to the expiration of two years after the date of such individual's death or the date of the enactment of this subsection, whichever is the later.245

Voluntary Agreements for Coverage of State and Local **Employees**

Purpose of Agreement

Sec. 218. (a) (1) The Secretary of Health, Education, and Welfare shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 210(a), for the purposes of this title the term "employment" includes any service included under an agree-

ment entered into under this section.

Definitions

(b) For the purposes of this section—

(1) The term "State" does not include the District of Columbia,

Guam or American Samoa.

(2) The term "political subdivision" includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.246

(3) The term "employee" includes an officer of a State or

political subdivision.

(4) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or by

a political subdivision thereof.

(5) The term "coverage group" means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing

²⁶⁵ For recomputation to include military service wage credits, see sec. 314(c)(2) of P.L. 85-840, p. 494, vol. II. ²⁴⁶ See sec. 1 of P.L. 87-878, p. 505, vol. II, for provisions deeming certain units of political subdivisions of the State of Arkansas to be "political subdivisions" for purposes of

service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Civilian employees of National Guard units of a State who are employed pursuant to section 90 of the National Defense Act of June 3, 1916 (32 U.S.C., sec. 42), and paid from funds allotted to such units by the Department of Defense, shall for purposes of this section be deemed to be employees of the State and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 205 of the Agricultural Marketing Act of 1946 (7 U.S.C. 1624) or section 14 of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499n), between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

Services Covered

(c) (1) An agreement under this section shall be applicable to any

one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the

case of any coverage group) any one or more of the following:

(A)²⁴⁷ All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation

for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services

²⁴⁷ P.L. 90-248, sec. 116(b)(1), deleted former subparagraph (A) and renumbered subparagraphs (B) and (C) as subparagraphs (A) and (B) effective with respect to services performed on or after January I, 1968. Former subparagraph (A) read "(A) Any service of an emergency nature;".

in such positions have not already been included under such

agreement pursuant to subsection (d)(3).

(4) The Secretary of Health, Education, and Welfare shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3) (B) is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d) (3).

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section and service the remuneration for which is excluded from

wages by paragraph (2) of section 209 (h).

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution

by a patient or inmate thereof,

(C) covered transportation service (as determined under sec-

tion 210(k)), and

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section, and

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake,

flood, or other similar emergency. 248

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3) (B) is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3)), whichever may be desired by the State.

(8) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option

²⁴⁵ P.L. 90-248, sec. 116(b)(2), added subparagraph (E) effective with respect to services performed on or after January 1, 1968.

of the State be modified on or after January 1, 1968, to exclude service performed by election officials or election workers if the remuneration paid in a calendar quarter for such service is less than \$50. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter in which the modification is mailed or delivered by other means to the Secretary. ²⁴⁹

Positions Covered by Retirement Systems

(d) (1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on the date of enactment of the succeeding paragraph of this subsection 249a (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of enactment of such succeeding paragraph, no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A)). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5) (A)) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is hereby declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legis-

lative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agree-

ment under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

 $^{^{249}}$ P.L. 90–248, sec. 116(c), inserted paragraph (8). 249a Par. (2) of subsec. 218(d) was enacted September 1, 1954, to be effective January 1, 1965.

(C) Not less than ninety days' notice of such referendum was

given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this

section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this title to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following

employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such

system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this title has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B)).

(5) (A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this title to

service in any policeman's or fireman's position. 250

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c), and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3) (B) of such subsection, such exclusion may not include any services to which such paragraph (3) (B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this

²⁵⁰ However, see sec. 218(k)(3) and sec. 218(p) of this title.

subsection, constitute a separate retirement system in case of any modi-

fication of the agreement thereafter agreed to.

(6) (A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then, for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned. Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of a State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (f) only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term "institutions of higher learning" includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees

of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, 251 Massachusetts, Minnesota, Nevada, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after the date of enactment of this subparagraph, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of

²⁵¹ P.L. 90-248, sec. 117, inserted "Illinois,".

this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph. 252

(D) (i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage

under the insurance system established under this title.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7), modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage

under the insurance system established under this title.²⁵³

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8)), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions

See footnote 260, this title.
 P.L. 90-248, sec. 116(a), added clause (ii).

of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1970 ²⁵⁴ or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (f) (1), any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under title III, there shall be deemed to be, if such State so desires, a separate retirement system with re-

spect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions.

tions other than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary of Health, Education, and Welfare that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such

system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the gov-

ernor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) or the corresponding provision of prior law. For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or

²⁵⁴ P.L. 90-248, sec. 116(d), inserted "1970" in lieu of "1967".

pursuant to paragraph (5) shall not be considered a member of the

retirement system.

(8) (A) Notwithstanding paragraph (1), if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a

member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system

if the agreement is modified to so provide.

(D) Except in the case of agreements with the States named in subsection (p) and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

Payments and Reports by States

(e) (1) Each agreement under this section shall provide—

(A) that the State will pay to the Secretary of the Treasury, at such time or times as the Secretary of Health, Education, and Welfare may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 if the services of employees covered by the agreement constituted employment as defined in section 3121 of such code; ²⁵⁵ and

(B) that the State will comply with such regulations relating to payments and reports as the Secretary of Health, Education, and Welfare may prescribe to carry out the purposes of this

section.

(2) Where—

(A) an individual in any calendar year performs services to which an agreement under this section is applicable (i) as the employee of two or more political subdivisions of a State or (ii) as the employee of a State and one or more political subdivisions of such State; and

(B) such State provides all of the funds for the payment of those amounts referred to in paragraph (1)(A) which are equivalent to the taxes imposed by section 3111 of the Internal Revenue Code of 1954 with respect to wages paid to such individual for

such services; and

(C) the political subdivision or subdivisions involved do not reimburse such State for the payment of such amounts or, in the case of services described in subparagraph (A) (ii), for the payment of so much of such amounts as is attributable to employment by such subdivision or subdivisions;

²⁵⁵ For secs. 3101, 3111, and 3121 of the Internal Revenue Code of 1954, see pp. 399, 402, and 403, vol. I.

then, notwithstanding paragraph (1), the agreement under this section with such State may provide (either in the original agreement or by a modification thereof) that the amounts referred to in paragraph (1)(A) may be computed as though the wages paid to such individual for the services referred to in clause (A) of this paragraph were paid by one political subdivision for services performed in its employ; but the provisions of this paragraph shall be applicable only where such State complies with such regulations as the Secretary may prescribe to carry out the purposes of this paragraph. The preceding sentence shall be applicable with respect to wages paid after an effective date specified in such agreement or modification, but in no event with respect to wages paid before (i) January 1, 1957, in the case of an agreement or modification which is mailed or delivered by other means to the Secretary before January 1, 1962, or (ii) the first day of the year in which the agreement or modification is mailed or delivered by other means to the Secretary, in the case of an agreement or modification which is so mailed or delivered on or after January 1, 1962.

Effective Date of Agreement

(f) (1) Except as provided in subsection (e) (2), any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is agreed to by the Secretary and the State.

(2) In the case of service performed by members of any coverage

group-

(A) to which an agreement under this section is made applica-

ble, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such

modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Secretary.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 had such services constituted employment for purposes of chapter 21 of such Code at the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State,

be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).256

Termination of Agreement

(g) (1) 257 Upon giving at least two years' advance notice in writing to the Secretary of Health, Education, and Welfare, a State may terminate, effective at the end of a calendar quarter specified in the notice, its agreement with the Secretary either-

(A) in its entirety, but only if the agreement has been in effect from its effective date for not less than five years prior to the

receipt of such notice; or

(B) with respect to any coverage group designated by the State, but only if the agreement has been in effect with respect to such coverage group for not less than five years prior to the

receipt of such notice.

(2) If the Secretary, after reasonable notice and opportunity for hearing to a State with whom he has entered into an agreement pursuant to this section, finds that the State has failed or is no longer legally able to comply substantially with any provision of such agreement or of this section, he shall notify such State that the agreement will be terminated in its entirety, or with respect to any one or more coverage groups designated by him, at such time, not later than two years from the date of such notice, as he deems appropriate, unless prior to such time he finds that there no longer is any such failure or that the cause for such legal inability has been removed.

(3) If any agreement entered into under this section is terminated in its entirety, the Secretary and the State may not again enter into an agreement pursuant to this section. If any such agreement is terminated with respect to any coverage group, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such coverage group.

Deposits in Trust Fund; Adjustments

(h) (1) All amounts received by the Secretary of the Treasury under an agreement made pursuant to this section shall be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a) (3) of section 201, subsection (b) (1) of such section, and subsection (a) (1) of section 1817, respectively.

(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such

²⁵⁶ P.L. 90-248, sec. 121, added paragraph (3).

257 Sec. 124 of the Social Security Amendments of 1967 provides:

((a) Notwithstanding the provisions of section 218(g)(1) of the Social Security Act
the Secretary may, under such conditions as he deems appropriate, permit the State of
Massachusetts to modify its agreement entered into under section 218 of such Act so as to
terminate the coverage of the employees of the Massachusetts Turnpike Authority effective
at the end of any calendar quarter within the two years next following the date on which
such agreement is so modified.

(b) If the coverage of employees of the Massachusetts Turnpike Authority is terminated
pursuant to subsection (a), coverage cannot later be extended to the employees of such
Authority."

manner and at such times as may be prescribed by regulations of the

Secretary of Health, Education, and Welfare.

(3) If an overpayment cannot be adjusted under paragraph (2), the amount thereof and the time or times it is to be paid shall be certified by the Secretary of Health, Education, and Welfare to the Managing Trustee, and the Managing Trustee, through the Fiscal Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payment in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary of Health, Education, and Welfare.

Regulations

(i) Regulations of the Secretary of Health, Education, and Welfare to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this title and chapter 21 and subtitle F of the Internal Revenue Code of 1954.

Failure To Make Payments

(j) In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary of Health, Education, and Welfare may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this Act. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h) (1).

Instrumentalities of Two or More States

(k) (1) The Secretary of Health, Education, and Welfare may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if— (A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such

States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after the date of enactment of this paragraph) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who

are employees of such instrumentality and who do not desire such

(C) it is provided that there shall be included in such division

coverage, and

or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended, then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d) (6) (C) apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this paragraph or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (Č) of subsection (d) (6) or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this Act may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3). For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen,

or both, as the case may be.

Delegation of Functions

(1) The Secretary of Health, Education, and Welfare is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

Wisconsin Retirement Fund

(m) (1) Notwithstanding paragraph (1) of subsection (d), the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

Certain Positions No Longer Covered by Retirement Systems

(n) Notwithstanding subsection (d), an agreement with any State entered into under this section prior to the date of the enactment of this subsection may, prior to January 1, 1958, be modified pursuant to subsection (c) (4) so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on such date of enactment), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of the enactment of this subsection, are no longer covered by a retirement system on the date such agreement is made applicable to such services.

Certain Employees of the State of Utah

(o) Notwithstanding the provisions of subsection (d), the agreement with the State of Utah entered into pursuant to his section may be modified pursuant to subsection (c) (4) so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950.

Policemen and Firemen in Certain States 258

(p) (1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, Kansas, Maine, Maryland, New York, North Carolina, North Dakota, Oregon, Puerto Rico, 259 South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to the date of enactment of this subsection may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), be modified pursuant to subsection (c)(4) to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after the date of the enactment of this subsection, but only upon compliance with the requirements of subsection (d) (3). For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

[NOTE.—For provisions relating to certain Maine Teachers, see sec. 316 of P.L. 85-840, p. 494.

For provisions relating to validation of coverage for certain Mississippi Teach-

ers, see sec. 102(h) of P.L. 86-778, p. 496.

For provisions relating to possible exclusion from coverage of Justices of the Peace and Constables in Nebraska, see sec. 102(i) of P.L. 86–778, p. 496.

For provision validating coverage of certain State and local employees in

Arkansas, see sec. 1 of P.L. 87-878, p. 505.

For provisions relating to district engineering aides in Oklahoma, see sec. 3 of P.L. 88-650, p. 507.]

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this title to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system. 260

²⁵⁸ Section 119(b) of the Social Security Amendments of 1967 provides:

[&]quot;In any case in which—

(1) an individual has performed services prior to the enactment of this Act in the employ of a political subdivision of the State of Nebraska in a fireman's position, and (2) amounts, equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954 had such services constituted employment for purposes of section 21 of such Code at the time they were performed, were timely paid in good faith to the Secretary of the Treasury, and (3) no refunds of such amounts paid in lieu of taxes have been obtained, the amount of the remuneration for such services with respect to which such amounts have been paid shall be deemed to constitute remuneration for employment as defined in section 209 of the Social Security Act."

250 P.L. 90-248, sec. 120(a)(2), added paragraph (2) applicable in the case of any State with respect to modifications of such State agreement under section 218 of the Social Security Act made after January 2, 1968. Section 120(b) of the Social Security Amendments of 1967 provides: "Nothing in the amendments made by subsection (a) shall authorize the extension of the insurance system established by title II of the Social Security Act under the provisions of section 218(d)(6)(C) of such Act to service in any fireman's position."

Time Limitation on Assessments

(q) (1) Where a State is liable for an amount due under an agreement pursuant to this section, such State shall remain so liable until the Secretary is satisfied that the amount due has been paid to the

Secretary of the Treasury.

(2) Notwithstanding paragraph (1), a State shall not be liable for an amount due under an agreement pursuant to this section, with respect to the wages paid to individuals, after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year

in which such wages were paid, or

(B) three years after the date on which such amount became due, or

(C) three years, three months, and fifteen days after the year

following the year in which this subsection is enacted,

unless prior to the expiration of such period the Secretary makes an

assessment of the amount due.

(3) For purposes of this subsection and section 205(c), an assessment of an amount due is made when the Secretary mails or otherwise delivers to the State a notice stating the amount he has determined to be due under an agreement pursuant to this section and the basis for such determination.

(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) shall never-

theless be deemed to have been made within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this paragraph, of such period as so extended), the State and the Secretary agree in writing to an extension of such period (or extended period) and, subject to such conditions as may be agreed upon, the Secretary makes the

assessment prior to the expiration of such extension; or

(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in any calendar quarters as members of a coverage group, and the Secretary of Health, Education, and Welfare makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of Health, Education, and Welfare, shall make such assessment only with respect to the wages paid to such individuals in such calendar quarters as members of such coverage group; or

(C) pursuant to subparagraph (A) or (B) of section 205(c) (5) he includes in his records an entry with respect to wages for an individual, but only if such assessment is limited to the amount due with respect to such wages and is made within the period such entry could be made in such records under such subpara-

graph.

(5) If the Secretary allows a claim for a credit or refund of an overpayment by a State under an agreement pursuant to this section, with respect to wages paid or alleged to have been paid to an individual in a calendar year for services as a member of a coverage group, and if as a result of the facts on which such allowance is based there is an amount due from the State, with respect to wages paid to such individual in such calendar year for services performed as a member of a coverage group, for which amount the State is not liable by reason of paragraph (2) then notwithstanding paragraph (2) the State shall be liable for such amount due if the Secretary makes an assessment of such amount due at the time of or prior to notification to the State of the allowance of such claim. For purposes of this paragraph and paragraph (6), interest as provided for in subsection (j) shall not be included in determining the amount due.

(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) or such period as extended pursuant to paragraph (4), with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agreement and for payment in connection with which the State is not liable by reasons

of paragraph (2), only if the State—

(A) pays to the Secretary of the Treasury the amount due

under such agreement with respect to such wages, and

(B) agrees in writing with the Secretary of Health, Education, and Welfare to an extension of the period specified in paragraph (2) with respect to wages paid to all individuals performing services as employees in such coverage group in the calendar quarters designated by the State in such wage reports as the periods in which such wages were paid. If the State so agrees, the period specified in paragraph (2), or such period as extended pursuant to paragraph (4), shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

(7) Notwithstanding the preceding provisions of this subsection, where there is an amount due by a State under an agreement pursuant to this section and there has been a fraudulent attempt on the part of an officer or employee of the State or any political subdivision thereof to defeat or evade payment of such amount due, the State shall be liable for such amount due without regard to the provisions of paragraph (2), and the Secretary may make an assessment of such

amount due at any time.261

Time Limitations on Credits and Refunds

(r) (1) No credit or refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar quarter shall be allowed after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which occurred the calendar quarter in which such wages were

paid or alleged to have been paid, or

(B) three years after the date the payment which included such overpayment became due under such agreement with respect

 $^{^{201}}$ See also sec. $102(f)\,(3)\,(B)$ of P.L. 86-778, on p. 495, vol. II, for conditions under which an assessment under sec. 218(q) will be deemed to have been made.

to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar quarter, or

(C) two years after such overpayment was made to the Secre-

tary of the Treasury, or

(D) three years, three months, and fifteen days after the year

following the year in which this subsection is enacted,

unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of Health, Education, and Welfare by the State.

(2) A claim for a credit or refund filed by a State after the expiration of the period specified by paragraph (1) shall nevertheless

be deemed to have been filed within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this subparagraph, of such period as so extended) the State and the Secretary agreed in writing to an extension of such period (or extended period) and the claim is filled with the Secretary by the State prior to the expiration of such extension; but any claim for a credit or refund valid because of this subparagraph shall be allowed only to the extent authorized by the conditions provided for in the agreement for such extension, or

(B) the Secretary deletes from his records an entry with respect to wages of an individual pursuant to the provisions of subparagraph (A), (B), or (E) of section 205(c) (5), but only with

respect to the entry so deleted.262

Review by Secretary

(s) Where the Secretary has made an assessment of an amount due by a State under an agreement pursuant to this section, disallowed a State's claim for a credit or refund of an overpayment under such agreement, or allowed a State a credit or refund of an overpayment under such agreement, he shall review such assessment, disallowance, or allowance if a written request for such review is filed with him by the State within 90 days (or within such further time as he may allow) after notification to the State of such assessment, disallowance, or allowance. On the basis of the evidence obtained by or submitted to the Secretary, he shall render a decision affirming, modifying, or reversing such assessment, disallowance, or allowance. In notifying the State of his decision, the Secretary shall state the basis therefor.²⁶³

Review by Court

(t) (1) Notwithstanding any other provision of this title any State, irrespective of the amount in controversy, may file, within two years after the mailing to such State of the notice of any decision by the Secretary pursuant to subsection (s) affecting such State, or within such further time as the Secretary may allow, a civil action for a redetermination of the correctness of the assessment of the amount due, the disallowance of the claim for a refund or credit, or the allowance of the refund or credit, as the case may be, with respect to

 $^{^{202}}$ See also sec. $102\,(\mathrm{f})\,(3)\,(\mathrm{B})$ of P.L. 86–778, p. 495, vol. II. 203 See also sec. $102\,(\mathrm{f})\,(3)\,(\mathrm{B})$ of P.L. 86–778, p. 495, vol. II, for conditions under which the 90-day limitation specified in sec. 218(s) shall not be applicable.

which the Secretary has rendered such decision. Such action shall be brought in the district court of the United States for the judicial district in which is located the capital of such State, or, if such action is brought by an instrumentality of two or more States, the principal office of such instrumentality. The judgment of the court shall be final, except that it shall be subject to review in the same manner as judgments of such court in other civil actions. Any action filed under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(2) Notwithstanding the provisions of section 2411 of title 28, United States Code, no interest shall accrue to a State after final judgment with respect to a credit or refund of an overpayment made

under an agreement pursuant to this section.

(3) The first sentence of section 2414 of title 28, United States Code, shall not apply to final judgments rendered by district courts of the United States in civil actions filed under this subsection. In such cases, the payment of amounts due to States pursuant to such final judgments shall be adjusted in accordance with the provisions of this section and with regulations promulgated by the Secretary.

Positions Compensated Solely on a Fee Basis 284

(u) (1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely

on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is agreed to by the Scretary and the

State.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

Sec. 219. [Repealed.]

Disability Provisions Inapplicable if Benefit Rights Impaired

Sec. 220. None of the provisions of this title relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this title; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this title if such benefit or payment would be greater without their application.

²⁶⁴ P.L. 90-248, sec. 122(d), added section 218(u).

Disability Determinations

Sec. 221. (a) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 216(i) or 223(d)) 265 and of the day such disability began, and the determination of the day on which such disability ceases, shall, except as provided in subsection (g), be made by a State agency pursuant to an agreement entered into under subsection (b). Except as provided in subsections (c) and (d), any such determinations shall be the determination of the Secretary for purposes of this title.

(b) The Secretary shall enter into an agreement with each State which is willing to make such an agreement under which the State agency or agencies administering the State plan approved under the Vocational Rehabilitation Act, or any other appropriate State agency or agencies, or both, will make the determinations referred to in subsection (a) with respect to all individuals in such State, or with respect to such class or classes of individuals in the State as may be designated

in the agreement at the State's request.

(c) The Secretary may on his own motion review a determination, made by a State agency pursuant to an agreement under this section, that an individual is under a disability (as defined in section 216(i) or 223(d)) 266 and, as a result of such review, may determine that such individual is not under a disability (as so defined) or that such disability began on a day later than that determined by such agency, or that such disability ceased on a day earlier than that determined by such agency.

(d) Any individual dissatisfied with any determination under subsection (a), (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section

205(g).

(e) Each State which has an agreement with the Secretary under this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as may be mutually agreed upon, the cost to the State of carrying out the agreement under this section. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection (f) of

 $^{^{205}}$ P.L. 90–228, sec. 158(c) (3), inserted "223(d)" in lieu of "223(c)". For effective date, see footnote 283 of this title. 206 P.L. 90–228, sec. 158(c) (4), inserted "223(d)" in lieu of "223(c)". For effective date, see footnote 283 of this title.

this section) to insure that the Federal Disability Trust Fund is charged with all expenses incurred which are attributable to the administration of section 223 and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the

United States for deposit in the Trust Funds.

(g) In the case of individuals in a State which has no agreement under subsection (b), in the case of individuals outside the United States, and in the case of any class or classes of individuals not included in an agreement under subsection (b), the determinations referred to in subsection (a) shall be made by the Secretary in accordance with regulations prescribed by him.267

Rehabilitation Services

Referral for Rehabilitation Services

Sec. 222. (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits,268 shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under the Vocational Rehabilitation Act for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

Deduction on Account of Refusal To Accept Rehabilitation Services

(b) (1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individuals benefit or benefits under sections 202 and 223 for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62, or 269 an individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act. Any individual who is a member or adherent of any recognized church or religious sect which teaches its member or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses

²⁶⁷ The regulations of the Secretary are contained in chapter III, title 20, of the Code of

²⁶⁷ The regulations of the Secretary are contained in chapter III, the 29, of the Secretary Federal Regulations.

²⁶⁸ P.L. 90-248, sec. 104(d)(3)(A), inserted "widow's insurance benefits, or widower's insurance benefits," applicable with respect to monthly benefits under title II of the Act for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

²⁶⁹ P.L. 90-248, sec. 104(d)(3)(B), inserted ", a widow or surviving divorced wife who has not attained age 60, a widower who has not attained age 62, or", applicable with respect to monthly benefits under title II of the Act for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act, shall, for the purposes of the first sentence of this subsection, be deemed to have done

so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1). If both this paragraph and paragraph (3) are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, or child is entitled, until the total of such deductions equal such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on

account of such refusal, are imposed under paragraph (1).

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

Period of Trial Work

(c) (1) The term "period of trial work", with respect to an individual entitled to benefits under section 223 or 202(d), means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 216(i) and 223, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to

be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 202(d) who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following the month in which this paragraph is enacted; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether

or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 223 (d) 270 ceases (as determined after application of paragraph

(2) of this subsection).

(5) In the case of an individual who becomes entitled to benefits under section 223 for any month as provided in clause (ii) of subsection (a) (1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 223.

Costs of Rehabilitation Services From Trust Funds

(d) (1) For the purpose of making vocational rehabilitation serve ices more readily available to disabled individuals who are-

(A) entitled to disability insurance benefits under section 223,

or

(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability), or

(C) entitled to widow's insurance benefits under section 202(e)

prior to ataining age 60,271 or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age 62,272 to the end that savings will result to the Trust Funds as a result of rehabilitating the maximum number of such individuals into productive activity, there are authorized to be transferred from the Trust Funds such sums as may be necessary to enable the Secretary to pay the costs of vocational rehabilitation services for such individuals (including (i) services during their waiting periods, and (ii) so much of the expenditures for the administration of any State plan as is attributable to carrying out this subsection); except that the total amount so made available pursuant to this subsection in any fiscal year may not exceed 1 percent of the total of the benefits under section 202(d) for children who have attained age 18 and are under a disability, the benefits under section 202(e) for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 202(f) for widowers who have not attained age 62,273 and the benefits under section

²⁷⁰ P.L. 90-248, sec. 158(c) (5), substituted "section 223(d)" in lieu of "section 223(c) (2)", applicable as provided in footnote 283, this title.
²⁷¹ P.L. 90-248, sec. 104(d) (4) (A), added subparagraphs (C) and (D), applicable with respect to monthly benefits under title II of the Act for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

January 1968.

278 See footnote 271, this title.

278 P.L. 90-248, sec. 104(d) (4) (B), inserted "who have attained age 18 and are under a disability, the benefits under section 202(e) for widows and surviving divorced wives who have not attained age 60 and are under a disability, the benefits under section 202(f) for widowers who have not attained age 62" in lieu of "who have attained age 18 and are under a disability", applicable with respect to monthly benefits under title II for and after the month of February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

223, which were certified for payment in the preceding year. The selection of individuals (including the order in which they shall be selected) to receive such services shall be made in accordance with criteria formulated by the Secretary which are based upon the effect the provision of such services would have upon the Trust Funds.

(2) In the case of each State which is willing to do so, such vocational rehabilitation services shall be furnished under a State plan

for vocational rehabilitation services which-

(A) has been approved under section 5 of the Vocational

Rehabilitation Act,

(B) provides that, to the extent funds provided under this subsection are adequate for the purpose, such services will be furnished, to any individual in the State who meets the criteria prescribed by the Secretary pursuant to paragraph (1), with reasonable promptness and in accordance with the order of selection determined under such criteria, and

(C) provides that such services will be furnished to any individual without regard to (i) his citizenship or place of residence,

(ii) his need for financial assistance except as provided in regulations of the Secretary in the case of maintenance during rehabilitation, or (iii) any order of selection which would otherwise be followed under the State plan pursuant to section 5(a) (4) of the Vocational Rehabilitation Act.

(3) In the case of any State which does not have a plan which meets the requirements of paragraph (2), the Secretary may provide such services by agreement or contract with other public or private agencies,

organizations, institutions, or individuals.

(4) Payments under this subsection may be made in installments, and in advance or by way of reimbursement, with necessary adjust-

ments on account of overpayments or underpayments.

(5) Money paid from the Trust Funds under this subsection to pay the costs of providing services to individuals who are entitled to benefits under section 223 (including services during their waiting periods), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid out from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as he may deem appropriate—

(A) the total cost of the services provided under this subsection,

and

(B) subject to the provisions of the preceding sentence, the amount of such cost which should be charged to each of such Trust Funds.

(6) For the purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in the Vocational Rehabilitation Act, except that such services may be limited in type, scope, or amount in accordance with regulations of the Secretary designed to achieve the purposes of this subsection.²⁷⁴

 $^{^{274}\,\}mathrm{The}$ regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

Disability Insurance Benefit Payments

Disability Insurance Benefits

Sec. 223. (a) (1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c) (1)),

(B) has not attained the age of sixty-five,

(C) has filed application for disability insurance benefits, and (D) is under a disability (as defined in subsection (d)²⁷⁵ shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c) (2) 276) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the sixty-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains age 65, or the third month following the month in which his disability ceases. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1) (B) 277 thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual.

(2) Except as provided in section 202(q), such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 215 as though he had attained age 62 (if a woman) or age 65 (if a man) in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes

entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which he filed his application for disability insurance benefits and was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b)) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of a woman who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 215(b)(3) shall not include the year in which she attained age 62, or any year thereafter.278

²⁷⁵ P.L. 90-248, sec. 158(c)(6), substituted "subsection (d)" in lieu of "subsection (c)(2)". Applicable as provided in footnote 283, this title.
276 P.L. 90-248, sec. 158(c)(7), substituted "subsection (c)(2)" in lieu of "subsection (c)(3)", Applicable as provided in footnote 283, this title.
277 P.L. 90-248, sec. 158(c)(8), inserted "subsection (d) except for paragraph (1)(B) thereof" in lieu of "subsection (c)(2) except for subparagraph (B) thereof". Applicable as provided in footnote 283, this title.
275 See also section 303(g) of P.L. 86-778, p. 500, vol. II.

Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1)) shall be deemed a valid application only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application. If, upon final decision by the Secretary, or decision upon judicial review thereof, such applicant is found to satisfy such requirements, the application shall be deemed to have been filed in such first month. An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if he files such application before the end of the 12th month immediately succeeding such month.

Definitions of Insured Status and Waiting Period 270

(c) For purposes of this section—

(1) An individual shall be insured for disability insurance

benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 (if a woman) or age 65 (if a man) and filed application for benefits under section 202(a) on the first day of such month, and

(B) (i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which

such month occurred, or

(ii) if such month ends before the quarter in which 280 he attains (or would attain) age 31,281 not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage.

For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) 282 The term "waiting period" means, in the case of any application for disability insurance benefits, the earliest period of

six consecutive calendar months-

²⁷⁹ P.L. 90-248, sec. 158(a) (1), added "of Insured Status and Waiting Period" to the heading of section 223(c). Applicable as provided in footnote 283, this title.

²⁸⁰ P.L. 90-248, sec. 105(b), added "the quarter in which", applicable with respect to monthly benefits under title II of the Act for months after January 1968, but only on the basis of applications for such benefits filed in or after January 1968.

²⁸¹ P.L. 90-248, sec. 105(b), deleted "and he is under a disability by reason of blindness (as defined in section 216(i) (1))", applicable with respect to monthly benefits under title II of the Act for months after January 1968, but only on the basis of applications for such benefits filed in or after January 1968.

²⁸² P.L. 90-248, sec. 158(a) (2), deleted former paragraph (2), and sec. 158(a) (3) redesignated former paragraph (3) as paragraph (2), effective as provided in footnote 283, this title. For former paragraph (2) as it read prior to its deletion, see p. 686, vol. II.

(A) throughout which the individual who files such ap-

plication has been under a disability, and

(B) (i) which begins not earlier than with the first day of the eighteenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such eighteenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such eighteenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January

1, 1957.

Definition of Disability 283

(d) (1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determineable physicial or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than

12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1) (A)—

(A) an individual (except a widow, surviving divorced wife, or widower for purposes of section 202 (e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A widow, surviving divorced wife, or widower shall not be determined to be under a disability (for purposes of section 202 (e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations

²⁵⁸ P.L. 90-248, sec. 158(b), added section 223(d), effective with respect to applications for disability insurance benefits under section 223 of the Act, and for disability determinations under section 216(i) of such Act, filed—(1) in or after January 1968 or (2) before January 1968 if the applicant has not died before such month and if—(A) notice of the final decision of the Secretary of Health. Education, and Welfare has not been given to the applicant before such month; or (B) the notice referred to in subparagraph (A) has been so given before such month but a civil action with respect to such final decision is commenced under section 205(g) of the Act (whether before, in, or after such month) and the decision in such civil action has not become final before such month,

prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically

acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence

thereof as the Secretary may require.

Reduction of Benefits Based on Disability on Account of Receipt of Workmen's Compensation

Sec. 224. (a) If for any month prior to the month in which an indidual attains the age of 62—

(1) such individual is entitled to benefits under section 223, and

(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent), and the Secretary has, in a prior month, received notice of such entitlement for such month,

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and selfemployment income will be reduced (but not below zero) by the amount

by which the sum of—

(3) such total of benefits under sections 223 and 202 for such

month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan,

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months)

reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual

and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the larger of (A) the average monthly wage used for purposes of computing his benefits under section 223, or (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209 (a) and 211 (b) (1)) 284 for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest. In any case where an individual's wages and self-employment income reported to the Secretary for a calendar year reach the limitations specified in sections 209(a) and 211(b)(1), the Secretary under regulations 285 shall estimate the total of such wages and self-employment income for purposes of clause (B) of the preceding sentence on the basis of such information as may be available to him indicating the extent (if any) by which such wages and self-employment income exceed such limi-

(b) If any periodic benefit under a workmen's compensation law or plan is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Secretary finds will approximate as nearly as practicable the reduction

prescribed by subsection (a).

(c) Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 203, but before deduc-

tions under such section and under section 222(b).

(d) The reduction of benefits required by this section shall not be made if the workmen's compensation law or plan under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under

section 223.

(e) If it appears to the Secretary that an individual may be eligible for periodic benefits under a workmen's compensation law or plan which would give rise to reduction under this section, he may require, as a condition of certification for payment of any benefits under section 223 to any individual for any month and of any benefits under section 202 for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Secretary may, in the absence of evidence to the contrary, rely upon such a certifi-

²⁸⁴ P.L. 90-248, sec. 159(a)(1), inserted "(computed without regard to the limitations specified in sections 209(a) and 211(b)(1))". applicable only with respect to monthly benefits under title II for months after January 1968.
285 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
287 P.L. 90-248, sec. 159(a)(2), inserted the last sentence of section 224(a). Applicable only with respect to monthly benefits under title II of the Act for months after January 1968. P.L. 90-248, sec. 159(b)(2), provides that for purposes of any redetermination which is made under section 224(f) of the Social Security Act, in the case of benefits subject to reduction under section 224 of such Act, where such reduction as first computed was effective with respect to benefits for January 1968 or a prior month, this amendment shall also be deemed to have applied in the initial determination of the "average current earnings" of the individual whose wages and self-employment income are involved.

cation by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section

205(i).

(f)(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Secretary shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a) shall be deemed to be the product of his average current earnings as initially determined under subsection (a) and the ratio of (i) the average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year in which such redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability). Any amount determined under the preceding sentence which is not a multiple of \$1 shall be reduced to the next lower multiple of \$1.

(g) Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefit shall then be applied to such disability insurance benefit.

Suspension of Benefits Based on Disability

Sec. 225. If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223, or that a child who has attained the age of eighteen and is entitled to benefits under section 202(d), or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower who has not attained age 62 and is entitled to benefits under section 202(f),287 may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 202(d), 202(e), 202(f), or 223,288 until it is determined (as provided in section 221) whether or

²⁸⁷ P.L. 90–248, sec. 104(d)(5)(A), inserted "or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower who has not attained age 62 and is entitled to benefits under section 202(f)," applicable with respect to monthly benefits under title II of the Act for and after February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

²⁸⁸ P.L. 90–248, sec. 104(d)(5)(B), inserted "section 202(d), 202(e), 202(f), or 223" in lieu of "section 223 or 202(d)", applicable with respect to monthly benefits under title II of the Act for and after February 1968, but only on the basis of applications for such benefits filed in or after January 1968.

not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 221(b), the Secretary shall promptly notify the appropriate State of his action under this section and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this section, the term "disability" has the meaning assigned to such term in section 223(d).289 Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 202, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this section shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

Entitlement to Hospital Insurance Benefits

Sec. 226. (a) Every individual who—
(1) has attained the age of 65, and

(2) is entitled to monthly insurance benefits under section

202 or is a qualified railroad retirement beneficiary,

shall be entitled to hospital insurance benefits under part A of title XVIII on his behalf for inpatient hospital services, post-hospital paragraph (2), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) For purposes of subsection (a)—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of title XVIII on his behalf for inpatient hospital services, post-hospital extended care services, and post-hospital home health services 290 (as such terms are defined in part C of title XVIII) furnished him in the United States (or outside the United States in the case of inpatient hospital services furnished under the conditions described in section 1814(f)) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services or posthospital home health services unless the discharge from the hospital required to qualify such services for payment under part A of title XVIII occurred after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later: and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 202, or to be a qualified railroad retirement beneficiary, for the month in which he died if he

 $^{^{289}}$ P.L. 90-248, sec. 158(c)(9), inserted "section 223(d)" in lieu of "section 223(c)(2)", applicable as provided in footnote 283, this title.

²⁰⁰ P.L. 90-248, sec. 129(c)(1), substituted "and post-hospital home health services" in lieu of "post-hospital home health services, and outpatient hospital diagnostic services", applicable with respect to services furnished after March 31, 1968.

would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had

he died in the next month.

(c) For purposes of this section, the term "qualified railroad retirement beneficiary" means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 21 of the Railroad Retirement Act of 1937. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 21 of the Railroad Retirement Act of 1937.

(d) For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 103 of the Social Security

Amendments of 1965.²⁹¹

Transitional Insured Status

Sec. 227. (a) In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 214(a), the 6 quarters of coverage referred to in so much of paragraph (1) of section 214(a) as follows clause (C) shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 202(a), and of his wife to benefits under section 202(b), but, in the case of such wife, only if she attains the age of 72 before 1969 and only with respect to wife's insurance benefits under section 202(b) for and after the month in which she attains such age. For each month before the month in which any such individual meets the requirements of section 214(a), the amount of his old-age insurance benefit shall, notwithstanding the provisions of section 202(a), be \$40 292 and the amount of the wife's insurance benefit of his wife shall, notwithstanding the provisions of section 202 (b), be \$20.293

(b) In the case of any individual who has died, who does not meet the requirements of section 214(a), and whose widow attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 214(a) and in so much of paragraph (1) thereof as follows clause (C) shall, for purposes of determining her entitlement to wid-

ow's insurance benefits under section 202(e), instead be—

(1) 3 quarters of coverage if such widow attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such widow attains the age of 72

in 1967, or

(3) 5 quarters of coverage if such widow attains the age of

The amount of her widow's insurance benefit for each month shall, notwithstanding the provisions of section 202(e) (and section 202 (m)), be \$40.294

²º¹ See also sec. 103 of P.L. 89–97, p. 507, vol. II. This section contains a transitional provision by which certain uninsured individuals may be deemed entitled to monthly benefits under sec. 202 for purposes of sec. 226 of the Act.
2º² P.L. 90–248, sec. 102(a)(1), inserted "\$40" in lieu of "\$35", applicable with respect to monthly benefits under title II for months after January 1968.
2º² P.L. 90–248, sec. 102(a)(1), inserted "\$20" in lieu of "\$17.50", applicable with respect to monthly benefits under title II for months after January 1968.
2º² P.L. 90–248, sec. 102(a)(2), inserted "\$40" in lieu of "\$35", applicable with respect to monthly benefits under title II for months after January 1968.

(c) In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 202(a) by reason of the application of subsection (a) of this section, who dies, and whose widow attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such widow to widow's insurance benefits under section 202(e).

Benefits at Age 72 for Certain Uninsured Individuals 295

Eligibility

Sec. 228. (a) Every individual who— (1) has attained the age of 72,

(2) (A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he attained such

(3) is a resident of the United States (as defined in subsection (e), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 210(i)) continuously during the 5 years immediately preceding the month in which he files

application under this section, and

(4) has filed application for benefits under this section, 296 shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he becomes so entitled to such benefits and ending with the month preceding the month in which he dies. No application under this section which is filed by an individual more than 3 months before the first month in which he meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.297

Benefit Amount

(b) (1) Except as provided in paragraph (2), the benefit amount to which an individual is entitled under this section for any month shall be \$40.298

(2) If both husband and wife are entitled (or upon application would be entitled) to benefits under this section for any month, the amount of the husband's benefit for such month shall be \$40 299 and the amount of the wife's benefit for such month shall be \$20.300

²⁰⁵ P.L. 89–368, sec. 302(a), enacted March 15, 1966, added section 228.

"(b) Certain Applications Under 1965 Amendmets.—For purposes of paragraph (4) of section 228(a) of the Social Security Act (added by subsection (a) of this section), an application filed under section 103 of the Social Security Amendments of 1965 before July 1966 shall be regarded as an application under such section 228 and shall, for purposes of such paragraph and of the last sentence of such section 228(a), be deemed to have been filed in July 1966, unless the person by whom or on whose behalf such application was filed notifies the Secretary that he does not want such application so regarded."

²⁰⁷ See footnote 296, this title.

²⁰⁸ P.L. 90–248, sec. 102(b) (1), inserted "\$40" in lieu of "\$35", applicable to monthly benefits under title II for months after January 1968.

²⁰⁹ P.L. 90–248, sec. 102(b) (2), inserted "\$40" in lieu of "\$35", applicable to monthly benefits under title II for months after January 1968.

³⁰⁰ P.L. 90–248, sec. 102(b) (2), inserted "\$20" in lieu of "\$17.50", applicable to monthly benefits under title II for months after January 1968.

Reduction for Governmental Pension System Benefits

(c) (1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he is

eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) \$20.301

(3) In the case of a husband and wife both of whom are entitled

to benefits under this section for any month-

(A) the benefit amount of the wife, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the husband is eligible for such month, over (ii) \$40,302 and

(B) the benefit amount of the husband, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (i) the total amount of any periodic benefits under governmental pension systems for which the wife is eligible for such month, over (ii) \$20.808

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental

pension system—

(A) such individual shall be deemed to have filed application

for such benefits.

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have

filed application, and

(C) to the extent that entitlement depends on such individual or his spouse having retired, such individual and his spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Secretary shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than \$1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of \$0.10, it shall be raised to the next

higher multiple of \$0.10.

³⁰¹ P.L. 90–248, sec. 102(b) (3), inserted "\$20" in lieu of "\$17.50", applicable to monthly benefits under title II for months after January 1968.

302 P.L. 90–248, sec. 102(b) (4), inserted "\$40" in lieu of "\$35", applicable to monthly benefits under title II for months after January 1968.

302 P.L. 90–248, sec. 102(b) (5), inserted "\$20" in lieu of "\$17.50", applicable to monthly benefits under title II for months after January 1968.

(8) Under regulations prescribed by the Secretary, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than \$5 may be accumulated until they equal or exceed \$5.

Suspension for Months in Which Cash Payments Are Made Under Public Assistance

(d) The benefit to which any individual is entitled under this section for any month shall not be paid for such month if-

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, or 304

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for

(or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Secretary, at such time and in such manner as may be prescribed in accordance with regulations of the Secretary, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month.

Suspension Where Individual Is Residing Outside the United States

(e) The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term "United States" means the 50 States and the District of Columbia.

Treatment as Monthly Insurance Benefits

(f) For purposes of subsections (t) and (u) of section 202, and of section 1840 a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 202.

Annual Reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

(g) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Secretary of Health, Education, and Welfare deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the

payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

³⁰⁴ P.L. 90-248, sec. 241(a), deleted "IV" and inserted "part A of title IV, or".

Definition

(h) For purposes of this section—

(1) The term "quarter of coverage" includes a quarter of coverage as defined in section 5(1) of the Railroad Retirement Act of

1937.

(2) The term "governmental pension system" means the insurance system established by this title or any other system or fund established by the United States, a State, any political subdivision of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Veterans' Administration as compensation for service-connected disability or death).

(3) The term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic

payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 216 without regard to subsections (b) and (f) of section 216.

Benefits in Case of Members of the Uniformed Services 305

Sec. 229. (a) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1967, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any individual, and for purposes of section 216(i)(3), such individual shall be deemed to have been paid, in each calendar quarter occurring after 1967 in which he was paid wages for service as a member of a uniformed service (as defined in section 210(m)) which was included in the term "employment" as defined in section 210(a) as a result of the provisions of section 210(1), wages (in addition to the wages actually paid to him for such service) of—

(1) \$100 if the wages actually paid to him in such quarter for

such services were \$100 or less,

(2) \$200 if the wages actually paid to him in such quarter for such services were more than \$100 but not more than \$200, or

(3) \$300 in any other case.

(b) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund annually, as benefits under this title and part A of title XVIII are paid after December 1967, such sums as the Secretary determines to be necessary to meet (1) the additional costs, resulting from subsection (a), of such benefits (including lump-sum death payments), (2) the additional administrative expenses resulting therefrom, and (3) any loss in interest to such trust funds resulting from the payment of such amounts. Such additional costs shall be determined after any increases in such benefits arising from the application of section 217 have been made.

³⁰⁵ P.L. 90-248, sec. 106, added section 229.

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION 1

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Appropriations

Section 301. The amounts made available pursuant to section 901(c) (1) (A) for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

Payments to States

Sec. 302. (a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal vear a total amount in excess of the amount appropriated therefor for such fiscal year.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a) pay, through the Fiscal Service of the Tresury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so

certified.

Provisions of State Laws

Sec. 303. (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by him under the Federal Unemployment Tax Act, includes provision for-

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance

¹ Sec. 1 of the President's Reorganization Plan No. 2 of 1949 (14 F.R. 5225, 63 Stat. 1065) see p. 899, vol. II, transferred the Bureau of Employment Security, including the United States Employment Service from the Federal Security Agency to the Department of Labor, effective August 20, 1949.

Title III of the Social Security Act (49 Stat. 626) is administered by the United States Department of Labor. Title III of the Social Security Act appears in the United States Code as secs. 501–503 of Title 42.

² This table of contents does not appear in the law.

of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary

of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment com-

pensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act), immediately upon such receipt, to the Secretary of the Treasury to the credit of the Unemployment Trust Fund estab-

lished by section 904; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b) of the Federal Unemployment Tax Act: Provided, That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: Provided further, That the amounts specified by section 903(c) (2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(6) The making of such reports in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the

correctness and verification of such report; and

(7) Making available upon request to any agency of the United States charged with the administration of public works, or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

(b) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such

law; or

(2) a failure to comply substantially with any provision speci-

fied in subsection (a);

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such denial or failure to comply. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State: Provided, That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: Provided further, That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of

the State law—

(1) That such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes; or

(2) That such State is failing to afford reasonable cooperation with every agency of the United States charged with the admin-

istration of any unemployment insurance law.

TITLE IV—GRANTS TO STATES FOR AID AND SERV-ICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES 123

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¹P.L. 90-248, sec. 240(a), inserted new heading in lieu of "Grants to States for Aid and Services to Needy Families with Children".

² Title IV is administered by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. Title IV of the Social Security Act appears in the United States Code as subchapter IV of title 42.

See footnote 1 of title I for provisions of the Economic Opportunity Act and the Food Stamp Act affecting a State plan approved under this title IV.

See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting Federally assisted programs.

lies of Unemployed Parents_____

See footnote 4 of title I for provisions of the Civil Rights Act of 1804 alecting assisted programs.

8 See also sec. 121(b) of P.L. 89-97 on p. 510, vol. II.

4 P.L. 90-248, sec. 240(b), inserted heading for Part A.

5 P.L. 90-248, sec. 202(d), provides:

"Effective with respect to quarters beginning after June 30, 1968, in determining the need of individuals claiming aid under a State plan approved under part A of title IV of the Social Security Act, the State shall apply the provisions of such part notwithstanding any provisions of law (other than such Act) requiring the State to disregard earned income of such individuals in determining need under such State plan."

6 This table of contents does not appear in the law.

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Appropriation

Section 401. For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid and services to needy families with children. Fr - E 7 - - 2 4110. 718 10. 6/5/70

State Plans for Aid and Services to Needy Families With Children Hoz (a

Sec. 402. (a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all politi- Store will cal subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or parttime employment of recipients and other persons of low income, as community services aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; 8 and (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) except as may be otherwise provided in clause (8), provide that the State agency shall, in deter-

⁷P.L. 90-248, sec. 241(b)(1), substituted "part" for "title". *P.L. 90-248, sec. 210(a)(2), inserted "(A)" and subdivision (B) of clause (5); effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with this amendment is approved.

mining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; 9 10 11 12 (8) provide that, in making the determination under clause (7), the State agency-

(A) shall with respect to any month disregard—

(i) all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance with standards prescribed by the Secretary) a full-time student or part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment, and

(ii) in the case of earned income of a dependent child not included under clause (i), a relative receiving such aid, and any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first \$30 of the total of such earned income for such month plus one-third of the remainder of such income for such month (except that the provisions of this clause (ii) shall not apply to earned income derived from participation on a project maintained under the programs established by section 432(b) (2) and (3); 13 and

(B) (i) may, subject to the limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (ii) may, before disregarding the amounts referred to in subparagraph (A) and clause (i) of this subparagraph, disregard

not more than \$5 per month of any income;

°P.L. 90-248, sec. 202(b), amended clause (7) in its entirety; effective July 1, 1969. Prior to this amendment, clause (7) read:

"(7) provide that the State agency shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than \$50 per month of earned income of each dependent child under the age of 18 but not in excess of \$150 per month of earned income of such dependent children in the same home, (B) the State agency may, subject to limitations prescribed by the Secretary, permit all or any portion of the earned or other income to be set aside for future identifiable needs of a dependent child, and (C) the State agency may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than \$5 of any income;"

for future identinable needs or a dependent child, and (6), disregard not more than \$5 of any income;"

10 P.L. 90-248, sec. 248(c), provides:

"Effective July 1, 1969, neither the provisions of clauses (A) through (C) of section 402(a) (7) of such Act as in effect before the enactment of this Act nor the provisions of section 402(a) (8) of such Act as amended by section 202(b) of this Act shall apply in the case of Puerto Rico, the Virgin Islands, or Guam. Effective no later than July 1, 1972, the State plans of Puerto Rico, the Virgin Islands, and Guam approved under section 402 of such Act shall provide for the disregarding of income in making the determination under section 402(a) (7) of such Act in amounts (agreed to between the Secretary and the State agencies involved) sufficiently lower than the amounts specified in section 402(a) (8) of such Act to reflect appropriately the applicable differences in income levels."

11 P.L. 90-248, sec. 202(c), provides:

"A State whose plan under section 402 of the Social Security Act has been approved by the Secretary shall not be deemed to have failed to comply substantially with the requirements of section 402(a) (7) of such Act (as in effect prior to July 1, 1969) for any period beginning after December 31, 1967, and ending prior to July 1, 1969, if for such period the State agency disregards earned income of the individuals involved in accordance with the requirements specified in section 402(a) (7) and (8) of such Act as amended by this Act."

12 See also section 1109 of the Social Security Act, p. 239, vol. I, for modification of this provision. See footnote 2, this title.

13 P.L. 90-248, sec. 204(e), inserted the material in parentheses.

except that, with respect to any month, the State agency shall not disregard any earned income (other than income referred to in subparagraph (B)) of-

(C) any one of the persons specified in clause (ii) of sub-

paragraph (A) if such person—

(i) terminated his employment or reduced his earned income without good cause within such period (of not less than 30 days) preceding such month as may be prescribed by the

Secretary; or

(ii) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by him, to be a bona fide

offer of employment; or

(D) any of such persons specified in clause (ii) of subparagraph (A) if with respect to such month the income of the persons so specified (within the meaning of clause (7)) was in excess of their need as determined by the State agency pursuant to clause (7) (without regard to clause (8)), unless, for any one of the four months preceding such month, the needs of such person were met by the furnishing of aid under the plan; 14 15 (9)16 provide safeguards which restrict the use or disclosure of information concerning applicants and receipients to purposes directly connected with the administration of aid to families with dependent children; (10)17 provide, effective July 1, 1951, that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall be furnished with reasonable promptness to all eligible individuals; (11)18 effective July 1, 1952, provide for prompt notice to appropriate lawenforcement officials of the furnishing of aid to families with dependent children in respect of a child who has been deserted or abandoned by a parent; (12)19 provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving oldage assistance under the State plan approved under section 2 of this Act; (13)20 provide a description of the services 21 which the State agency makes available to maintain and strengthen family life for children, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services; (14) provide for the development and application of a program for such family services, as defined in section 406(d), and childwelfare services, as defined in section 425, for each child and rela-

¹⁴ P.L. 90-248, sec. 202(b), added clause (8), effective July 1, 1969.
15 See footnote 10, this title.
16 P.L. 90-248, sec. 202(a), redesignated former clauses (8) through (13) as clauses (9) through (14).
17 See footnote 16, above. See footnote 7 of title I.
18 See footnote 16, above.
19 See footnote 16, above.

¹⁹ See footnote 16, above.

²⁰ See footnote 16, above. ²¹ P.L. 90-248, sec. 201(a)(2), deleted "(if any)". See footnote 23, this title, for effective date.

tive who receives aid to families with dependent children, and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the particular home conditions and other needs of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capability for self-support and care and in order to maintain and strengthen family life and to foster child development; 22 23 provide—

(A) for the development of a program for each appropriate relative and dependent child receiving aid under the plan, and each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), with the objective

of-

(i) assuring, to the maximum extent possible, that such relative, child, and individual will enter the labor force and accept employment so that they will become self-sufficient,

(ii) preventing or reducing the incidence of births out of

wedlock and otherwise strengthening family life,

(B) for the implementation of such programs by-(i) assuring that such relative, child, or individual who is referred to the Secretary of Labor pursuant to clause (19) is furnished child-care services and that in all appropriate cases family planning services are offered them, and

(ii) in appropriate cases, providing aid to families with dependent children in the form of payments of the types de-

scribed in section 406(b)(2), and

(C) that the acceptance by such child, relative, or individual of family planning services provided under the plan shall be voluntary on the part of such child, relative, or individual and shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan,

(D) for such review of each such program as may be necessary (as frequently as may be necessary, but at least once a year) to

insure that it is being effectively implemented,

(E) for furnishing the Secretary with such reports as he may specify showing the results of such programs, and

may specify showing the results of such programs, and 22(a) in its entirety. Prior to this amendment this clause read:
"provide for the development and application of a program for such welfare and related services for each child who receives aid to families with dependent children as may be necessary in the light of the particular home conditions and other needs of such child, and provide for coordination of such programs, and any other services provided for children under the State plan, with the child-welfare services plan developed as provided in part 3 of title V, with a view toward providing welfare and related services which will best promote the welfare of such child and his family."

2 P.L. 90-248, sec. 201 (2) (11), provides:
"The amendments made by subsections (a), (b), (d), (e), and (f) of this section shall be effective July 1, 1968 (or earlier if the State plan so provides); except that (A) if on the date of enactment of this Act the agency of a State referred to in section 402(a) (3) of the Social Security Act is different from the agency of such State responsible for administering the plan for child-welfare services developed pursuant to part B of title IV of the Social Security Act, the provisions of section 402(a) (15) (F) of such Act (added thereto by subsection (a) of this section) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such Act in a political subdivision is different from the local agency in such subdivision administering the State's plan for child-welfare services developed pursuant to part B of title IV of such Act, the provisions of such section 402(a) (15) (F) shall not apply with respect to such agencies but only so long as such agencies developed pursuant to part B of title IV of such Act, the provisions of such section 402(a) (15) (F) shall not apply with respect to such agencies but only so long as such local agencies are different."

(F) to the extent that such programs under this clause or clause (14) are developed and implemented by services furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishing of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services; 24

(16) provide that where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with re-

spect to the situation it may have; 25 (17) provide—

(A) for the development and implementation of a program

under which the State agency will undertake—

(i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the

paternity of such child and secure support for him, and

(ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and

(B) for the establishment of a single organizational unit in the State agency or local agency administering the State plan in each political subdivision which will be responsible for the ad-

ministration of the program referred to in clause (A); 26

(18) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the State current agency in administering the program referred to in clause (17) (A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan; ²⁷ (19) provide—

(A) for the prompt referral to the Secretary of Labor or his representative for participation under a work incentive program

established by part C of—

(i) each appropriate child and relative who has attained age sixteen and is receiving aid to families with dependent

children.

(ii) each appropriate individual (living in the same home as a relative and child receiving such aid) who has attained such age and whose needs are taken into account in making the determination under section 402(a) (7), and

²⁴ P.L. 90-248, sec. 210(a), added clause (15). For effective date, see footnote 23, this

title. 25 P.L. 90-248, sec. 201(a), added clause (16). For effective date, see footnote 23, this title. ²⁵ P.L. 90-248, sec. 201(a), added clause (17). For effective date, see footnote 23, this

title. ²⁷ P.L. 90-248, sec. 201(a), added clause (18). For effective date, see footnote 23, this title.

(iii) any other person claiming aid under the plan (not included in clauses (i) and (ii)), who, after being informed of the work incentive programs established by part C, requests such referral unless the State agency determines that participation in any of such programs would be inimical to the welfare of such person or the family;

except that the State agency shall not so refer a child, relative, or individual under clauses (i) and (ii) if such child, relative, or

individual is—

(iv) a person with illness, incapacity, or advanced age,

(v) so remote from any of the projects under the work incentive programs established by part C that he cannot effectively participate under any of such programs,

(vi) a child attending school full time, or

(vii) a person whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household;

(B) that aid under the plan will not be denied by reason of such referral or by reason of an individual's participation on a project under the program established by section 432(b) (2) or

(3);

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 20 per centum of the cost of such programs, as specified in section 435(b);

(D) that (i) training incentives authorized under section 434, and income derived from a special work project under the program established by section 432(b)(3) shall be disregarded in determining the needs of an individual under section 402(a)(7), and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established

by section 432(b) (2) or (3) shall be taken into account;

(E) that, with respect to any individual referred pursuant to subparagraph (A) who is participating in a special work project under the program established by section 432(b)(3), (i) the State agency, after proper notification by the Secretary of Labor, will pay to such Secretary (at such times and in such manner as the Secretary of Health, Education, and Welfare prescribes) the money payments such State would otherwise make to or on behalf of such individual (including such money payments with respect to such individual's family), or 80 per centum of such individual's earnings under such program, whichever is lesser and (ii) the State agency will supplement any earnings received by such individual by payments to such individual (which payments shall be considered aid under the plan) to the extent that such payments when added to the individual's earnings from his participation in such special work project will be equal to the amount of the aid that would have been payable by the State agency with respect to such individual's family had he not participated in such special work project, plus 20 per centum of such individual's earnings from such special work project; and

repor

(F) that if and for so long as any child, relative, or individual (referred to the Secretary of Labor pursuant to subparagraph (A) (i) and (ii) and section 407(b)(2)) has been found by the Secretary of Labor under section 433(g) to have refused without good cause to partcipate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment-

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 406(b) (2) (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 408 will

be made:

(ii) aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family

makes such refusal;

(iii) if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(iv) if such individual makes such refusal, such individual's needs shall not be taken into account in making the

determination under clause (7);

except that the State agency shall for a period of sixty days, make payments of the type described in section 406(b)(2) (without regard to clauses (A) through (E) thereof) on behalf of the relative specified in clause (i), or continue aid in the case of a child specified in clause (ii) or (iii), or take the individual's needs into account in the case of an individual specified in clause (iv), but only if during such period such child, relative, or individual accepts counseling or other services (which the State agency shall make available to such child, relative, or individual) aimed at persuading such relative, child, or individual, as the case may be, to participate in such program in accordance with the determination of the Secretary of Labor; 28 (20) effective July 1, 1969, provide for aid to families with dependent children in the form footer of foster care in accordance with section 408; 29 (21) provide that the State agency will report to the Secretary, at such times (not less often than once each calendar quarter) and in such manner as the Secretary may prescribe—

(A) the name, and social security account number, if known, of each parent of a dependent child or children with respect to

whom aid is being provided under the State plan-

²⁸ P.L. 90-248, sec. 204(b), added clause (19). P.L. 90-248, sec. 204(c) (1), provides: "(c) (1) The amendment made by subsection (b) shall in the case of any State be effective on July 1, 1968, or if a statute of such State prevents it from complying with the requirements of such amendment on such date, such amendment shall with respect to such State be effective on July 1, 1969; except such amendment shall be effective earlier (in the case of any State), but not before April 1, 1968, if a modification of the State plan to comply with such amendment is approved on an earlier date."

29 P.L. 90-248, sec. 205(a), added clause (20).

(i) against whom an order for the support and maintenance of such child or children has been issued by a court of competent jurisdiction but who is not making payments in compliance or partial compliance with such order, or against whom a petition for such an order has been filed in a court having jurisdiction to receive such petition, and

(ii) whom it has been unable to locate after requesting and utilizing information included in the files of the Department of Health, Education, and Welfare maintained pursuant

to section 205,

(B) the last known address of such parent and any information it has with respect to the date on which such parent could last be located at such address, and

(C) such other information as the Secretary may specify to

assist in carrying out the provisions of section 410; 30

(22) provide that the State agency will, in accordance with standards prescribed by the Secretary, cooperate with the State agency administering or supervising the administration of the plan of another

State under this part—

(A) in locating a parent residing in such State (whether or not permanently) against whom a petition has been filed in a court of competent jurisdiction of such other State for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

(B) in securing compliance or good faith partial compliance by a parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of a child or children of such parent with respect to whom aid is being provided under the plan of such other State; ³¹ and (23) provide that by July 1,7

1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been propor-

tionately adjusted.32

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

(c) The Secretary shall, on the basis of his review of the reports received from the States under clause (15) of subsection (a), compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and admin-

³⁰ P.L. 90-248, sec. 211(a), added clause (21), effective January 1, 1969. ³¹ P.L. 90-248, sec. 211(a), added clause (22), effective January 1, 1969. ³² P.L. 90-248, sec. 213(b), added clause (23).

istered by the States under such clause. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such clause (15).33

Payment to States

Sec. 403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall (subject to subsection (d)) 34 pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing

October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or

any other type of remedial care or the cost thereof)—

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$18 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii), with respect to whom payments described in section 406(b)(2) are made in such month and included as expenditures for purposes of

this paragraph or paragraph (2)); plus
(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of \$32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of \$100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such

month; 36 37 and

³³ P.L. 90-248, sec. 201(b), added subsection (c). For effective date, see footnote 23, this

³⁸ P.L. 90-248, sec. 201(b), added subsection (d).

42 P.L. 90-248, sec. 208(a), inserted "(subject to subsection (d))".

536 Pursuant to sec. 9 of the Act of April 19, 1950 (64 Stat. 44, 47), the Secretary of the Treasury must also pay to the States, in addition to the amounts produced by sec. 403(a) of the Social Security Act, an amount equal to 80 percent of the State share of assistance expenditures under the State plan with respect to Navajo and Hopi Indians. See footnote 13 of title I for provisions of this Act.

57 P.L. 90-248, sec. 205(b), inserted clauses (i) and (ii) in lieu of "the product of \$32 multiplied by the total number of recipients of aid to families with dependent children for such month". Effective only with respect to foster care provided after December 1967.

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof) not counting so much of any expenditure with respect to any month as exceeds \$18 multiplied by the total number of recipients of such aid for such month; and

(3) in the case of any State, 38 an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of

the State plan—

(A) 75 per centum of so much of such expenditures as

(i) any of the services described in clauses (14) and (15) of section 402(a) which are provided to any child or relative who is receiving aid under the plan, or to any other individual (living in the same home as such relative and child) whose needs are taken into account in making the determination under clause (7) of such section.

(ii) any of the services described in clauses (14) and (15) of section 402(a) which are provided to any child or relative who is applying for aid to families with dependent children or who, within such period or periods as the Secretary may prescribe, has been or is likely to become an applicant for or recipient of such aid, or

(iii) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus 39 40

(B) one-half of the remainder of such expendi-

tures. 41 42

The services referred to in subparagraph (A)⁴³ shall include only-

(C) 44 services provided by the staff of the State agency, or of the local agency administering the State plan in the

as P.L. 90–248, sec. 201(e) (2), deleted "whose State plan approved under section 402 meets the requirements of subsection (c) (1)". For effective date, see footnote 23, this title. SP.L. 90–248, sec. 201(e), substituted subparagraph 403(a) (3) (A) in lieu of former subparagraphs 403(a) (3) (A) and (B). Effective with respect to services furnished after June 30, 1968, or furnished after such earlier date as the State plan may provide with respect to this amendment. For provisions of subparagraphs 403(a) (3) (A) and (B) as they read prior to this amendment, see pp. 686 and 687, vol. II.
40 P.L. 90–248, sec. 201(h), provides:

"Notwithstanding subparagraph (A) of section 403(a) (3) of the Social Security Act (as amended by subsection (c) of this section), the rate specified in such subparagraph in the case of any State shall be 85 per centum (rather than 75 per centum) with respect to expenditures, for services furnished pursuant to clauses (14) and (15) of section 402(a) of such Act, made on or after the date of enactment of this Act, and prior to July 1, 1969."

41 P.L. 90–248, sec. 201(d) (1), redesignated former subparagraphs "(C)", "(D)", and "(E)" as subparagraphs (B)", "(C)", and "(D)".

42 P.L. 90–248, sec. 248(b), provides:

"Notwithstanding subparagraphs (A) and (B) of section 403(a) (3) of such Act (as amended by this Act), the rate specified in such subparagraphs in the case of Puerto Rico, the Virgin Islands, and Guam shall be 60 per centum (rather than 75 or 85 per centum)."

43 P.L. 90–248, sec. 201(d) (2), inserted "subparagraph (A)" in lieu of "subparagraphs (A) and (B)".

44 See footnote 41, this title.

political subdivision: Provided, That no funds authorized under this part 45 shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (D) 46, if

provided by such staff, and

(D)⁴⁷ subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contact with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (C) 48 hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved; and except that, to the extent specified by the Secretary, child-welfare services, family planning services, and family services may be provided from sources other than those referred to in subparagraphs (C) and (D).49 The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraph (B) applies 50 shall be determined in accordance with such methods and procedures as may be permitted by the Secretary.

(4) [Repealed] 51

(5) in the case of any State, an amount equal to the sum of— (A) 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children in the form of payments or care specified in paragraph (1) of section 406(e), and

(B) 75 per centum of the total amount expended under the State plan during such quarter as emergency assistance to

⁴⁵ P.L. 90-248, sec. 241 (b) (2), inserted "part" in lieu of "title".

46 P.L. 90-248, sec. 201 (d) (1) (B), inserted "(D)" in lieu of "(E)".

47 See footnote 41, this title.

48 P.L. 90-248, sec. 201 (d) (1) (C), inserted "(C)" in lieu of "(D)".

49 P.L. 90-248, sec. 201 (d) (3), inserted the material following the last semicolon.

50 P.L. 90-248, sec. 201 (d) (4), inserted "subparagraph (B) applies" in lieu of "subparagraphs (B) and (C) apply"

51 P.L. 90-248, sec. 201 (e) (3), repealed section 403 (a) (4). For effective date, see footnote 23, this title. Prior to repeal, section 403 (a) (4) read:

"(4) in the case of any State whose State plan approved under section 402 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph."

needy families with children in the form of services specified in paragraph (1) of section 406(e).⁵²

The number of individuals with respect to whom payments described in section 406(b)(2) are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 10 53 per centum of the number of other recipients of aid to families with dependent children for such month.⁵⁴ In computing such 10 percent, there shall not be taken into account individuals with respect to whom such payments are made for any month in accordance with section 402(a) (19) (F). 55 56

(b) The method of computing and paying such amounts shall be

as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisons of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarters, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Secretary

may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service 57 of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the

⁵² P.L. 90-248, sec. 206(a), added section 403(a) (5).
58 P.L. 90-248, sec. 207(b) (1), inserted "10" in lieu of "5".
54 See also sec. 1108 of this Act for a further limitation on the amounts which may be certified for payment to Puerto Rico, the Virgin Islands, and Guam for any fiscal year.
55 P.L. 90-248, sec. 207(b) (2), added this sentence.
55 See sections 1118 and 1119, title XI, pp. 244 and 245. this volume.
57 The Division of Disbursement was consolidated in the Fiscal Service of the Treasury Department by Reorganization Plan No. III, sec. 1(a), effective June 30, 1940 (54 Stat. 1231)

State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) [Repealed] 58

(d) Notwithstanding any other provision of this Act, the average monthly number of dependent children under the age of 18 who have been deprived of parental support or care by reason of the continued absence from the home of a parent with respect to whom payments under this section may be made to a State for any calendar quarter after June 30, 1968, shall not exceed the number which bears the same ratio to the total population of such State under the age of 18 on the first day of the year in which such quarter falls as the average monthly number of such dependent children under the age of 18 with respect to whom payments under this section were made to such State for the calendar quarter beginning January 1, 1968, bore to the total population of such State under the age of 18 on that date. 59

Operation of State Plans 60

Sec. 404. (a) In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds-

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substan-

tial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402

(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) 61 until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under

or parts of the State plan not affected by such failure).62

(b) No payment to which a State is otherwise entitled under this title for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part 63 with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to

⁵⁸ P.L. 90-248, sec. 201(e)(1), repealed section 403(c) effective as per foctnote 23, this title. For section 403(c) as it read prior to repeal, see p. 687, vol. II.

⁵⁹ P.L. 90-248, sec. 208(b), added section 403(d).

⁶⁰ See sec. 1116, title XI, p. 243, this volume.

⁶¹ P.L. 90-248, sec. 245, inserted the material in parentheses.

⁶² P.L. 90-248, sec. 245, inserted this sentence in lieu of "Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State."

⁶² P.L. 90-248, sec. 241(b)(4), inserted "part" in lieu of "title".

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a State statute for adequate care and assistance with respect to such child.

Use of Payments for Benefit of Child

Sec. 405. Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 406(b) (2), or in seeking appointment of a guardian or legal representative as provided in section 1111, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 404 and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

Definitions

Sec. 406. When used in this part ⁶⁴—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen or (B) under the age of twenty-one and (as determined by the State in accordance with standards prescribed by the Secretary) a student regularly attending a school, college, or university, or regularly attending a course of vocational or technical training designed to fit him for gainful employment.⁶⁵

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section

 $^{^{64}}$ P.L. 90–248, sec. 241(b) (5), inserted "part" in lieu of "title". See also secs. 407 and 408.

407), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 402(a)(1)) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual,66 but only with respect to a State whose State plan approved under section 402 includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative

through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such

manner as to protect the welfare of the family;

(C) ** periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children

described in section 408(a); and

(E) 70 opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual

with respect to whom it is made;

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

⁶⁶ P.L. 90-248, sec. 207(a) (1), inserted the material after "(2)" and before "but only" in lieu of: "payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child and relative," of P.L. 90-248, sec. 207(a) (2), deleted former clause (B) and redesignated clauses (C), (D), (E), and (F) as clauses (B), (C), (D), and (E). Prior to this amendment, former clause (B) read:

"(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to families with dependent children to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;".

Section

⁶⁸ See footnote 67, this title.
69 See footnote 67, this title.
70 See footnote 67, this title.

(d) The term "family services" means services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum

self-support and personal independence."

(e) (1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a) (1) in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under State law on behalf of, such child or any other member of the house-

hold in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under

section 402 includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate. 72

Dependent Children of Unemployed Fathers 73

Sec. 407. (a) The term 'dependent child' shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of his father, and who is living with any of the relatives specified in section 406(a) (1) in a place of residence maintained by one or more of such relatives as his (or their) own home.

⁷¹ P.L. 90-248, sec. 201(f), added section 406(d). For effective date, see footnote 23,

TP.L. 90-248, sec. 201(f), added section 406(d). For effective date, see footnote 23, this title.

TP.L. 90-248, sec. 206(b), added section 406(e).

PL. 90-248, sec. 203(b), provides:

"In the case of an application for aid to families with dependent children under a State plan approved under section 402 of such Act with respect to a dependent child as defined in section 407(a) of such Act (as amended by this section) within 6 months after the effective date of the modification of such State plan which provides for payments in accordance with section 407 of such Act as so amended, the father of such child shall be deemed to meet the requirements of suchparagraph (C) of section 407(b)(1) of such Act (as so amended) if at any time after April 1961 and prior to the date of application such father met the requirements of such subparagraph (C). For purposes of the preceding sentence, an individual receiving aid to families with dependent children (under section 407 of the Social Security Act as in effect before the enactment of this Act) for the last month ending before the effective date of the modification referred to in such sentence shall be deemed to have filed application for such aid under such section 407 (as amended by this section) on the day after such effective date."

(b) The provisions of subsection (a) shall be applicable to a State if the State's plan approved under section 402—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection

(a) when—

(A) such child's father has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such father has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training

for employment, and

(C) (i) such father has 6 or more quarters of work (as defined in subsection (d)(1)) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3)) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and (2) provides—

(A) for such assurances as will satisfy the Secretary that fathers of dependent children as defined in subsection (a) will be referred to the Secretary of Labor as provided in section 402(a) (19) within thirty days after receipt of aid

with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained; and

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a) if,

and for as long as, such child's father—

(i) is not currently registered with the public em-

ployment offices in the State, or

(ii) receives unemployment compensation under an unemployment compensation law of a State or of the United States.

(c) Not withstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a), (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b) (1), or (ii) for any period prior to the time when the father satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b) (2)), under the program therein specified, to refer such father to the Secretary of Labor pursuant to section 402(a) (19).

(d) For purposes of this section—

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than \$50 (or which is a "quarter of coverage" as defined in section 213(a)(2)), or in which such individual participated in a community work and training program under section 409 or any other work and training program subject to the limitations in section 409, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30,

or December 31; and

(3) an individual shall be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

(A) he would have been eligible to receive such unemploy-

ment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any covered work he performed) have made him eligible to receive such unemployment compensation upon filing application.⁷⁴

Federal Payments for Foster Home Care of Dependent Children

Sec. 408. Effective for the period beginning May 1, 1961—

(a) the term "dependent child" shall, notwithstanding section 406(a), also include a child (1) who would meet the requirements of such section 406(a) or of section 407 except for his removal after April 30, 1961, from the home of a relative (specified in such section 406(a)) as a result of a judicial determination to the effect that continuation therein would be contrary to the welfare of such child (2) whose placement and care are the responsibility of (A) the State or local agency administering the State plan approved under section 402, or (B) any other public agency with whom the State agency administering or supervising the administration of such State plan has made an agreement which is still in effect and which includes provision for assuring development of a plan, satisfactory to such State agency, for such child as provided in paragraph (f) (1) and such other provisions as may be necessary to assure accomplishment of the objectives of the State plan approved under section 402, (3) who has been placed in a foster family home or child-care institution as a result of such determination, and (4) who (A) received aid under such State plan in or for the month in which court proceedings leading to such determination were initiated, or (B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) in the case of a child who had been living with a relative specified in section 406(a) within 6 months prior to the month in which such

⁷⁴ P.L. 90–248, sec. 203(a), amended section 407 in its entirety "effective January 1, 1968; except that no State which had in operation a program of aid with respect to children of unemployed parents under section 407 of the Social Security Act (as in effect prior to such amendment) in the calendar quarter commencing October 1, 1967, shall be required to include any additional child or family under its State plan approved under section 402 of such Act, by reason of the enactment of such amendment, prior to July 1, 1969." See p. 687, vol. II, for section 407 as it read prior to this amendment.

proceedings were initiated, would have received such aid in or for such month if in such month he had been living with (and removed from the home of) such a relative and application had been made therefor; 75

(b) the term "aid to families with dependent children" shall, notwithstanding section 406(b), include also foster care in behalf of a

child described in paragraph (a) of this section—

(1) in the foster family home of any individual, whether the payment therefor is made to such individual or to a public or

nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payment therefor is made to such institution or to a public or nonprofit private child-placement or child-care agency, but subject to limitations prescribed by the Secretary with a view to including as "aid to families with dependent children" in the case of such foster care in such institutions only those items which are included in such term in the case of foster care in the foster family home of an individual.

(c) the number of individuals counted under clause (A) of section 403(a)(1) for any month shall include individuals (not otherwise included under such clause) with respect to whom expenditures were made in such month as aid to families with dependent children

in the form of foster care; and

(d) services described in paragraph (f)(2) of this section shall be considered as part of the administration of the State plan for purposes of section 403(a)(3); ⁷⁶

but only with respect to a State whose State plan approved under section 402—

(e) includes aid for any child described in paragraph (a) of this

section, and

(f) includes provision for (1) development of a plan for each such child (including periodic review of the necessity for the child's being in a foster family home or child-care institution) to assure that he receives proper care and that services are provided which are designed to improve the conditions in the home from which he was removed or to otherwise make possible his being placed in the home of a relative specified in section 406(a), and (2) use by the State or local agency administering the State plan, to the maximum extent practicable, in placing such a child in a foster family home or child-care institution, of the services of employees, of the State public-welfare agency referred to in section 522(a) (relating to allotments to States for child welfare services under part 3 of title V) or of any local agency participating in the administration of the plan referred to in such section, who perform functions in the administration of such plan.

For the purposes of this section, the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing homes of this type, as meeting the standards

⁷⁵ P.L. 90-248, sec. 205(c), added subparagraph (B). Applicable only with respect to foster care provided after December 1967.

⁷⁶ P.L. 90-248, sec. 201(e)(4), deleted "and (4)". For effective date see footnote 23, this title.

established for such licensing; and the term "child-care institution" means a nonprofit private child-care institution which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing.

Community Work and Training Programs

Sec. 409. (a) For the purpose of assisting the States in encouraging, through community work and training programs of a constructive nature, the conservation of work skills and the development of new skills for individuals who have attained the age of 18 and are receiving aid to families with dependent children, under conditions which are designed to assure protection of the health and welfare of such individuals and the dependent children involved, expenditures (other than for medical or any other type of remedial care) for any month with respect to a dependent child (including payments to meet the needs of any relative or relatives, specified in section 406(a), with whom he is living) under a State plan approved under section 402 shall not be excluded from aid to families with dependent children because such expenditures are made in the form of payments for work performed in such month by any one or more of the relatives with whom such child is living if such work is performed for the State agency or any other public agency under a program (which need not be in effect in all political subdivisions of the State) administered by or under the supervision of such State agency, if there is State financial participation in such expenditures, and if such State plan includes—

(1) provisions which, in the judgment of the Secretary, pro-

vide reasonable assurance that-

(A) appropriate standards for health, safety, and other conditions applicable to the performance of such work by

such relatives are established and maintained;

(B) payments for such work are at rates not less than the minimum rate (if any) provided by or under State law for the same type of work and not less than the rates prevail-

ing on similar work in the community;

(C) such work is performed on projects which serve a useful public purpose, do not result either in displacement of regular workers or in the performance by such relatives of work that would otherwise be performed by employees of public or private agencies, institutions, or organizations, and (except in cases of projects which involve emergencies or which are generally of a nonrecurring nature) are of a type which has not normally been undertaken in the past by the State or community, as the case may be;

(D) in determining the needs of any such relative, any additional expenses reasonably attributable to such work will

be considered;

(E) any such relative shall have reasonable opportunities to seek regular employment and to secure any appropriate

training or retraining which may be available;

(F) any such relative will, with respect to the work so performed, be covered under the State workmen's compensation law or be provided comparable protection; and (G) aid under the plan will not be denied with respect to any such relative (or the dependent child) for refusal by such relative to perform any such work if he has good cause for

such refusal;

(2) provision for entering into cooperative arrangements with the system of public employment offices in the State looking toward employment or occupational training of any such relatives performing work under such program, including appropriate provision for registration and periodic reregistration of such relatives and for maximum utilization of the job placement services and other services and facilities of such offices;

(3) provision for entering into cooperative arrangements with the State agency or agencies responsible for administering or supervising the administration of vocational education and adult education in the State, looking toward maximum utilization of available public vocational or adult education services and facilities in the State in order to encourage the training or retraining of any such relatives performing work under such program and otherwise assist them in preparing for regular employment;

(4) provision for assuring appropriate arrangements for the care and protection of the child during the absence from the home of any such relative performing work under such program in order to assure that such absence and work will not be inimical

to the welfare of the child;

(5) provision that there will be no adjustment or recovery by the State or any political subdivision thereof on account of any payments which are correctly made for such work; and

(6) such other provisions as the Secretary finds necessary to assure that the operation of such program will not interfere with

achievement of the objectives set forth in section 401.

(b) In the case of any State which makes expenditures in the form described in subsection (a) under its State plan approved under section 402, the proper and efficient administration of the State plan, for purposes of section 403(a) (3) and (4) may not include the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in subsection (a) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.⁷⁷

Assistance by Internal Revenue Service in Locating Parents

Sec. 410. (a) Upon receiving a report from a State agency made pursuant to section 402(a)(21), the Secretary shall furnish to the Secretary of the Treasury or his delegate the names and social security account numbers of the parents contained in such report, and the name of the State agency which submitted such report. The Secretary of the Treasury or his delegate shall endeavor to ascertain the address of each such parent from the master files of the Internal Revenue Service, and shall furnish any address so ascertained to the State agency which submitted such report.

⁷⁷ P.L. 90-248, sec. 204(c)(2), provides: "The provisions of section 409 of the Social Security Act shall not apply to any State with respect to any quarter beginning after June 30, 1968."

(b) There are hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of subsection (a). The Secretary shall transfer to the Secretary of the Treasury from time to time sufficient amounts out of the monies appropriated pursuant to this subsection to enable him to perform his functions under subsection (a).78

Part B-Child-Welfare Services 79

Appropriation

Sec. 420. For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child-welfare services, the following sums are hereby authorized to be appropriated: \$55,000,000 for the fiscal year ending June 30, 1968, \$100,000,000 for the fiscal year ending June 30, 1969, and \$110,000,000 for each fiscal year thereafter.

Allotments to States

Sec. 421. The sum appropriated pursuant to section 420 for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary, as follows: He shall allot \$70,000 to each State, and shall allot to each State an amount which bears the same ratio to the remainder of the sum so appropriated for such year as the product of (1) the population of such State under the age of 21 and (2) the allotment percentage of such State (as determined under section 423) bears to the sum of the corresponding products of all the States.

Payment to States

Sec. 422. (a) From the sums appropriated therefor and the allotment available under this part, the Secretary shall from time to time pay to each State-

(1) that has a plan for child-welfare services which has been

developed as provided in this part and which—

(A) provides that (i) the State agency designated pursuant to section 402(a)(3) to administer or supervise the administration of the plan of the State approved under part A of this title will administer or supervise the administration of such plan for child-welfare services and (ii) to the extent that child-welfare services are furnished by the staff of the State agency or local agency administering such plan for child-welfare services, the organizational unit in such State or local agency established pursuant to section 402(a) (15) will be responsible for furnishing such child-welfare services.80

⁷⁸ P.L. 90-248, sec. 211(b), added section 410.
78 P.L. 90-248, sec. 240(c), added Part B, effective January 2, 1968.
89 P.L. 90-248, sec. 240(d) (2), added subparagraph (A):
"effective July 1, 1969, except that (A) if on the date of enactment of this Act the agency of a State administering its plan for child-welfare services developed under part B of title IV of the Social Security Act is different from the agency of the State designated pursuant to section 402(a)(3) of such Act, so much of paragraph (1) of section 422(a) of such Act as precedes subparagraph (B) (as added by paragraph (2) of such subsection (d)) shall not apply with respect to such agencies but only so long as such agencies of the State are different, and (B) if on such date the local agency administering the plan of a State for child-welfare services developed under part B of title IV of the Social Security Act is different from the local agency in such subdivision administering the plan of such State under part A of title IV of such Act, so much of such paragraph (1) as precedes such subparagraph (B) shall not apply with respect to such local agencies but only so long as such local agencies are different."

(B)⁸¹ provides for coordination between the services provided under such plan and the services provided for dependent children under the State plan approved under part A of this title, with a view to provision of welfare and related services which will best premote the welfare of such children and their families, and

(C) 82 provides, with respect to day care services (including the provision of such care) provided under this title—

(i) for cooperative arrangements with the State health authority and the State agency primarily responsible for State supervision of public schools to assure maximum utilization of such agencies in the provision of necessary health services and education for children receiving day care.

(ii) for an advisory committee, to advise the State public welfare agency on the general policy involved in the provision of day care services under the plan, which shall include among its members representatives of other State agencies concerned with day care or services related thereto and persons representative of professional or civic or other public or nonprofit private agencies, organizations, or groups concerned with the provision of day care,

(iii) for such safeguards as may be necessary to assure provision of day care under the plan only in cases in which it is in the best interest of the child and the mother and only in cases in which it is determined, under criteria established by the State, that a need for such care exists; and, in cases in which the family is able to pay part or all of the costs of such care, for payment of such fees as may be reasonable in the light of such ability,

(iv) for giving priority, in determining the existence of need for such day care, to members of low-income or other groups in the population, and to geographical areas, which have the greatest relative need for extension

of such day care, and

(v) that day care provided under the plan will be provided only in facilities (including private homes) which are licensed by the State, or approved (as meeting the standards established for such licensing) by the State agency responsible for licensing facilities of this type, and

(vi) for the development and implementation of arrangements for the more effective involvement of the parent or parents in the appropriate care of the child and the improvement of the health and development of the child, and

(2) that makes a satisfactory showing that the State is extending the provision of child-welfare services in the State, with priority being given to communities with the greatest need for such services after giving consideration to their relative financial

⁸¹ P.L. 90-248, sec. 240(d)(1), redesignated former subparagraphs "(Δ)" and "(B)" as "(B)" and "(C)". ⁸² See footnote 81, this title.

need, and with a view to making available by July 1, 1975, in all political subdivisions of the State, for all children in need thereof, child-welfare services provided by the staff (which shall to the extent feasible be composed of trained child-welfare personnel) of the State public welfare agency or of the local agency participating in the administration of the plan in the political subdivision.

except that (effective July 1, 1969, or, if earlier, on the date as of which the modification of the State plan to comply with this requirement with respect to subprofessional staff is approved) such plan shall provide for the training and effective use of paid subprofessional staff with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency, an amount equal to the Federal share (as determined under section 423) of the total sum expended under such plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child-welfare services, in developing State services for the encouragement and assistance of adequate methods of community child-welfare organization, in paying the costs of returning any runaway child who has not attained the age of eighteen to his own community in another State, and of maintaining such child until such return (for a period not exceeding fifteen days), in cases in which such costs cannot be met by the parents of such child or by any person, agency, or institution legally responsible for the support of such child. In developing such services for children, the facilities and experience of voluntary agencies shall be utilized in accordance with child-care programs and arrangements in the State and local communities as may be authorized by the State.

(b) The method of computing and paying such amounts shall be

as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of subsection (a).

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

Allotment Percentage and Federal Share

Sec. 423. (a) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(b) The "Federal share" for any State for any fiscal year shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (1) in no case shall the Federal share be less than 33½ per centum or more than 66½ per centum, and (2) the Federal share shall be 66½ per centum in the case

of Puerto Rico, the Virgin Islands, and Guam.

(c) The Federal share and the allotment percentage for each State shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning July 1 next succeeding such promulgation: Provided, That the Federal shares and allotment percentages promulgated under section 524(c) of the Social Security Act in 1966 shall be effective for purposes of this section for the fiscal years ending June 30, 1968, and June 30, 1969.

(d) For purposes of this section, the term "United States" means

the fifty States and the District of Columbia.

Reallotment

Sec. 424. The amount of any allotment to a State under section 421 for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in such section shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously alloted to them under that section and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 421.

Definition

Sec. 425. For purposes of this title, the term "child-welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purpose of (1) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day-care or other child-care facilities.

Research, Training, or Demonstration Projects

Sec. 426. (a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and

special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects

relating to such matters.

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

Part C—Work Incentive Program for Recipients of Aid Under State Plan Approved Under Part A 88

Purpose

Sec. 430. The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in special work projects, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being rec-

⁸⁸ P.L. 90-248, sec. 204(a), added Part C.

ognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.

Appropriation

Sec. 431. There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

Establishment of Programs

Sec. 432. (a) The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive programs (as provided for in subsection (b) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

(b) Such programs shall include, but shall not be limited to, (1) a program placing as many individuals as is possible in employment, and utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of special work projects for individuals for whom a

job in the regular economy cannot be found.

(c) In carrying out the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private non-profit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b).

(d) Using funds appropriated under this part, the Secretary, in order to carry out the purposes of this part, shall utilize his authority under the Manpower Development and Training Act of 1962, the Act of June 6, 1933, as amended (48 Stat. 113), and other Acts, to the extent

such authority is not inconsistent with this Act.

(e) The Secretary shall take appropriate steps to assure that the present level of manpower services available under the authority of other statutes to recipients of aid to families with dependent children is not reduced as a result of programs under this part.

Operation of Program

Sec. 433. (a) The Secretary shall provide a program of testing and counseling for all persons referred to him by a State, pursuant to section 402, and shall select those persons whom he finds suitable for the programs established by clauses (1) and (2) of section 432(b). Those

not so selected shall be deemed suitable for the program established by clause (3) of such section 432(b) unless the Secretary finds that there is good cause for an individual not to participate in such program.

(b) The Secretary shall develop an employability plan for each suitable person referred to him under section 402 which shall describe the education, training, work experience, and orientation which it is determined that each such person needs to complete in order to enable him to become self-supporting.

(c) The Secretary shall make maximum use of services available from other Federal and State agencies and, to the extent not otherwise available on a nonreimbursable basis, he may reimburse such agen-

cies for services rendered to persons under this part.

(d) To the extent practicable and where necessary, work incentive programs established by this part shall include, in addition to the regular counseling, testing, and referral available through the Federal-State Employment Service System, program orientation, basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development, and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement.

(e) (1) In order to develop special work projects under the program established by section 432(b)(3), the Secretary shall enter into agreements with (Å) public agencies, (B) private nonprofit organizations established to serve a public purpose, and (C) Indian tribes with respect to Indians on a reservation, under which individuals deemed suitable for participation in such a program will be provided work which serves a useful public purpose and which would not otherwise

be performed by regular employees.
(2) Such agreements shall provide—

(A) for the payment by the Secretary to each employer a portion of the wages to be paid by the employer to the individuals for the work performed: 84

(B) the hourly wage rate and the number of hours per week individuals will be scheduled to work on special work projects of

such employer;

(C) that the Secretary will have such access to the premises of the employer as he finds necessary to determine whether such employer is carrying out his obligations under the agreement and this part; and

(D) that the Secretary may terminate any agreement under

this subsection at any time.

(3) The Secretary shall establish one or more accounts in each State with respect to the special work projects established and maintained pursuant to this subsection and place into such accounts the amounts paid to him by the State agency pursuant to section 402(a) (19) (E). The amounts in such accounts shall be available for the pay-

^{*}P.Il. 90-248, sec. 204(d), provides:
"During the fiscal year ending June 30, 1969, the Secretary of Labor may, notwithstanding the provisions of section 433(e)(2)(A) of the Social Security Act, pay all of
the wages to be paid by the employer to the individuals for work performed for public
agencies (including Indian tribes with respect to Indians on a reservation) under special
work projects established under the program established by section 432(b)(3) of such Act
and may transfer into accounts established pursuant to section 433(e)(3) of such Act
such amounts as he finds necessary in addition to amounts paid into such accounts pursuant to section 402(a)(19)(E) of such Act."

ments specified in subparagraph (A) of paragraph (2). At the end of each fiscal year and for such period of time as he may establish, the Secretary shall determine how much of the amounts paid to him by the State agency pursuant to section 402(a)(19)(E) were not expended as provided by the preceding sentence of this paragraph and shall return such unexpended amounts to the State, which amounts shall be regarded as overpayments for purposes of section 403(b)(2).

(4) No wage rates provided under any agreement entered into under this subsection shall be lower than the applicable minimum

wage for the particular work concerned.

(f) Before entering into a project under any of the programs established by this part, the Secretary shall have reasonable assurances that—

(1) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(2) such project will not result in the displacement of em-

ployed workers.

(3) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant,

(4) appropriate workmen's compensation protection is pro-

vided to all participants.

(g) Where an individual referred to the Secretary of Labor pursuant to section 402(a) (19) (A) (i) and (ii) refuses without good cause to accept employment or participate in a project under a program established by this part, the Secretary of Labor shall (after providing opportunity for fair hearing) notify the State agency which referred such individual and submit such other information as he

may have with respect to such refusal.

(h) With respect to individuals who are participants in special work projects under the program established by section 432(b) (3), the Secretary shall periodically (but at least once every six months) review the employment record of each such individual while on such special work project and on the basis of such record and such other information as he may acquire determine whether it would be feasible to place such individual in regular employment or on any of the projects under the programs established by section 432(b) (1) and (2).

Incentive Payment

Sec. 434. The Secretary is authorized to pay to any participant under a program established by section 432(b)(2) an incentive payment of not more than \$30 per month, payable in such amounts and at such times as the Secretary prescribes.

Federal Assistance

Sec. 435. (a) Federal assistance under this part shall not exceed 80 per centum of the costs of carrying out this part. Non-Federal contributions may be cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(b) Costs of carrying out this part include costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the Secretary, but may not include any reimbursement for time spent by participants in work, training, or other participation in the program; except that with respect to special work projects under the program established by section 432(b)(3), the costs of carrying out this part shall include only the costs of administration.

Period of Enrollment

Sec. 436. (a) The program established by section 432(b)(2) shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the

United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in accordance with regulations prescribed by the Secretary after consultation with the Secretary of Health, Education, and Welfare) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 402.

Relocation of Participants

Sec. 437. The Secretary may assist participants to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employable and self-supporting. Such assistance shall be given only to participants who concur in their relocation and who will be employed at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for participants, their dependents, and their household belongings plus such relocation allowance as the Secretary determines to be reasonable.

Participants Not Federal Employees

Sec. 438. Participants in projects under programs established by this part shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

Rules and Regulations

Sec. 439. The Secretary may issue such rules and regulations as he finds necessary to carry out the purposes of this part: *Provided*, That in developing policies for programs established by this part the Secretary shall consult with the Secretary of Health, Education, and Welfare.

Annual Report

Sec. 440. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the work incentive programs established by this part.

Evaluation and Research

Sec. 441. The Secretary shall (jointly with the Secretary of Health, Education, and Welfare) provide for the continuing evalution of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and research regarding such programs or individual projects under such programs. For purposes of sections 435 and 443, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part.

Review of Special Work Projects by a State Panel

Sec. 442. (a) The Secretary shall make an agreement with any State which is able and willing to do so under which the Governor of the State will create one or more panels to review applications tentatively approved by the Secretary for the special work projects in such State to be established by the Secretary under the program established

by section 432(b) (3).

(b) Each such panel shall consist of not more than five and not less than three members, appointed by the Governor. The members shall include one reperesentative of employers and one representative of employees; the remainder shall be representatives of the general public. No special work project under such program developed by the Secretary pursuant to an agreement under section 433(e)(1) shall, in any State which has an agreement under this section, be established or maintained under such program unless such project has first been approved by a panel created pursuant to this section.

Collection of State Share

Sec. 443. If a non-Federal contribution of 20 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 402(a)), the Secretary of Health, Education, and Welfare may withhold any action under section 404 because of the State's failure to comply substantially with a provision required by section 402. If the Secretary of Health, Education, and Welfare does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 3(a), 403(a), 1003(a), 1403(a), 1603(a), and 1903(a) until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 402(a)(19)(C)) equals 20 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 20 per centum will be contributed as required by section 402. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health, Education, and Welfare to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 435.

Agreements With Other Agencies Providing Assistance to Families of Unemployed Parents

Sec. 444. (a) The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b)) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals referred by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals referred to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health, Education, and Welfare under part A of this title.

(b) A qualified State agency referred to in subsection (a) is a State agency which is charged with the administration of a program—

(1) the purpose of which is to provide aid or assistance to the

families of unemployed parents,

(2) which is not established pursuant to part A of title IV of the Social Security Act,

(3) which is financed entirely from funds appropriated by the

Congress, and

(4) none of the financing of which is made available under any program established pursuant to title V of the Economic Op-

portunity Act.

(c) (1) Any agreement under this section with a qualified State agency shall provide that such agency will, with respect to all individuals receiving aid or assistance under the program of aid or assistance to families of unemployed parents administered by such agency, comply with the requirements imposed by section 402(a) (15) and section 402(a) (19) (F) in the same manner and to the same extent as if (A) such qualified agency were the agency in such State administering or supervising the administration of a State plan approved under part A of this title, and (B) individuals receiving aid or assistance under the program administered by such qualified agency were recipients of aid under a State plan which is so approved.

(2) Any agreement entered into under this section shall remain in effect for such period as may be specified in the agreement by the Secretary and the qualified State agency, except that, whenever the Secretary determines, after reasonable notice and opportunity for hearing to the qualified State agency, that such agency has failed substantially to comply with its obligations under such agreement, the Secretary may suspend operation of the agreement until such time as he is satisfied that the State agency will no longer fail substantially to comply

with its obligations under such agreement.

(3) Any such agreement shall further provide that the agreement will be inoperative for any calendar quarter if, for the preceding calendar quarter, the maximum amount of benefits payable under the program of aid or assistance to families of unemployed parents administered by the qualified State agency which is a party to such agreement is lower than the maximum amount of benefits payable under such program for the quarter which ended September 30, 1967.

(d) The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt

from it of a list of the names of individuals rereferred to the Secretary, furnish to such agency the names of each individual on such list participating in a special work project under section 433(a)(3) whom the Secretary determines should continue to participate in such project. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been referred to the Secretary by such agency under such section 402(a)(15) for a period of at least six months.

TITLE V-MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES*

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Authorization of Appropriations

Sec. 501. For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State,

(1) services for reducing infant mortality and otherwise pro-

moting the health of mothers and children; and

(2) services for locating, and for medical, surgical, corrective, and other services and care for and facilities for diagnosis, hospitalization, and aftercare for, children who are crippled or who

are suffering from conditions leading to crippling,

there are authorized to be appropriated \$250,000,000 for the fiscal year ending June 30, 1969, \$275,000,000 for the fiscal year ending June 30, 1970, \$300,000,000 for the fiscal year ending June 30, 1971, \$325,000,-000 for the fiscal year ending June 30, 1972, and \$350,000,000 for the fiscal year ending June 30, 1973, and each fiscal year thereafter.

Purposes for Which Funds Are Available

Sec. 502. Appropriations pursuant to section 501 shall be available

for the following purposes in the following proportions:

(1) In the case of the fiscal year ending June 30, 1969, and each of the next 3 fiscal years, (A) 50 percent of the appropriation for such year shall be for allotments pursuant to sections 503 and

^{*}Title V is administered by the Social and Rehabilitation Service, Department of Health, Education and Welfare. Title V of the Social Security Act appears in the United States Code as subchapter V of title 42 P.L. 90-248, sec. 240(e)(1), repealed part 3 of title V effective January 2, 1968. Section 301 of P.L. 90-248 amended the remainder of title V in its entirety, effective with respect to fiscal years beginning after June 30, 1968. For title V as it read prior to the enactment of P.L. 90-248, see pp. 688-700, vol. II. See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting Federally assisted programs.

1 This table of contents does not appear in the law.

504; (B) 40 percent thereof shall be for grants pursuant to sections 508, 509, and 510; and (C) 10 percent thereof shall be for grants, contracts, or other arrangements pursuant to sections 511 and 512.

(2) In the case of the fiscal year ending June 30, 1973, and each fiscal year thereafter, (A) 90 percent of the appropriation for such years shall be for allotments pursuant to sections 503 and 504; and (B) 10 percent thereof shall be for grants, contracts, or

other arrangements pursuant to sections 511 and 512.

Not to exceed 5 percent of the appropriation for any fiscal year under this section shall be transferred, at the request of the Secretary, from one of the purposes specified in paragraph (1) or (2) to another purpose or purposes so specified. For each fiscal year, the Secretary shall determine the portion of the appropriation, within the percentage determined above to be available for sections 503 and 504, which shall be available for allotment pursuant to section 503 and the portion thereof which shall be available for allotment pursuant to section 504. Notwithstanding the preceding provisions of this section, of the amount appropriated for any fiscal year pursuant to section 501, not less than 6 percent of the amount appropriated shall be available for family planning services from allotments under section 503 and for family planning services under projects under sections 508 and 512.

Allotments to States for Maternal and Child Health Services

Sec. 503. The amount determined to be available pursuant to section 502 for allotments under this section shall be allotted for payments for maternal and child health services as follows:

(1) One-half of such amount shall be allotted by allotting to each State \$70,000 plus such part of the remainder of such onehalf as he finds that the number of live births in such State bore to the total number of live births in the United States in the

latest calendar year for which he has statistics.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of live births in such State; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 505), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of maternal and child health.

Allotments to States for Crippled Children's Services

Sec. 504. The amount determined to be available pursuant to section 502 for allotments under this section shall be allotted for payments for crippled children's services as follows:

(1) One-half of such amount shall be allotted by allotting to each State \$70,000 and allotting the remainder of such one-half according to the need of each State as determined by him after

taking into consideration the number of crippled children in such State in need of the services referred to in paragraph (2) of sec-

tion 501 and the cost of furnishing such services to them.

(2) The remaining one-half of such amount shall (in addition to the allotments under paragraph (1)) be allotted to the States from time to time according to the financial need of each State for assistance in carrying out its State plan, as determined by the Secretary after taking into consideration the number of crippled children in each State in need of the services referred to in paragraph (2) of section 501 and the cost of furnishing such services to them; except that not more than 25 percent of such one-half shall be available for grants to State agencies (administering or supervising the administration of a State plan approved under section 505), and to public or other nonprofit institutions of higher learning (situated in any State), for special projects of regional or national significance which may contribute to the advancement of services for crippled children.

Approval of State Plans

Sec. 505. (a) In order to be entitled to payments from allotments under section 502, a State must have a State plan for maternal and child health services and services for crippled children which—

(1) provides for financial participation by the State;

(2) provides for the administration of the plan by the State health agency or the supervision of the administration of the plan by the State health agency; except that in the case of those States which on July 1, 1967, provided for administration (or supervision thereof) of the State plan approved under section 513 (as in effect on such date) by a State agency other than the State health agency, the plan of such State may be approved under this section if it would meet the requirements of this subsection except for provision of administration (or supervision thereof) by such other agency for the portion of the plan relating to services for crippled children, and, in each such case, the portion of such plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title;

(3) provides (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient operation of the plan and (B) provides for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by

the State agency; ²

²P.L. 90-248, sec. 304, inserted "(A)" after "provides" at the beginning of paragraph (3) and added clause (B) at the end thereof; effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with such amendment is approved.

(4) provides that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as he may from time to time find necessary to assure the correctness and

verification of such reports;

(5) provides for cooperation with medical, health, nursing, educational, and welfare groups and organizations and, with respect to the portion of the plan relating to services for crippled children, with any agency in such State charged with administering State laws providing for vocational rehabilitation of physically handicapped children;

(6) provides for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary and included in the plan) of inpatient hospital services provided

under the plan;

(7) provides, with respect to the portion of the plan relating to services for crippled children, for early identification of children in need of health care and services, and for health care and treatment needed to correct or ameliorate defects or chronic conditions discovered thereby, through provision of such periodic screening and diagnostic services, and such treatment, care and other measures to correct or ameliorate defects or chronic conditions, as may be provided in regulations of the Secretary;

(8) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 508 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily helping to reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with child bearing and of satisfactorily helping to reduce infant and maternal mortality;

(9) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 509 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the health of children and youth of school or preschool

age:

(10) effective July 1, 1972, provides a program (carried out directly or through grants or contracts) of projects described in section 510 which offers reasonable assurance, particularly in areas with concentrations of low-income families, of satisfactorily promoting the dental health of children and youth of school or preschool age;

(11) provides for carrying out the purposes specified in section

501;

(12) provides for the development of demonstration services (with special attention to dental care for children and family planning services for mothers) in needy areas and among groups in providing the state of t

in special need,

(13) provides that, where payment is authorized under the plan for services which an optometrist is licensed to perform, the individual for whom such payment is authorized may, to the extent practicable, obtain such services from an optometrist licensed

to perform such services except where such services are rendered in a clinic, or another appropriate institution, which does not have an arrangement with optometrists so licensed; and

(14) provides that acceptance of family planning services provided under the plan shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to eligibility for or the receipt of any service under the plan.

(b) The Secretary shall approve any plan which meets the require-

ments of subsection (a).

Payments

Sec. 506. (a) From the sums appropriated therefor and the allotments available under section 503(1) or 504(1), as the case may be, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing July 1, 1968, an amount, which shall be used exclusively for carrying out the State plan, equal to one-half of the total sum expended during such quarter for carrying out such plan with respect to maternal and child health services and services for crippled children,

respectively.

(b) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been

made under this subsection.

(3) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this sec-

tion shall be deemed obligated.

(c) The Secretary shall also from time to time make payments to the States from their respective allotments pursuant to section 503(2) or 504(2). Payments of grants under sections 503(2), 504(2), 508, 509, 510, and 511, and of grants, contracts, or other arrangements under section 512, may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the section involved.

(d) The total amount determined under subsections (a) and (b) and the first sentence of subsection (c) for any fiscal year ending after June 30, 1968, shall be reduced by the amount by which the sum expended (as determined by the Secretary) from non-Federal sources for maternal and child health services and services for crippled chil-

dren for such year is less than the sum expended from such sources for such services for the fiscal year ending June 30, 1968. In the case of any such reduction, the Secretary shall determine the portion thereof which shall be applied, and the manner of applying such reduction, to the amounts otherwise payable from allotments under section 503 or

section 504.

(e) Notwithstanding the preceding provisions of this section, no payment shall be made to any State thereunder from the allotments under section 503 or section 504 for any period after June 30, 1968, unless the State makes a satisfactory showing that it is extending the provision of services, including services for dental care for children and family planning for mothers, to which such State's plan applies in the State with a view to making such services available by July 1, 1975, to children and mothers in all parts of the State.

Operation of State Plans

Sec. 507. If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer com-

plies with the provisions of section 505; or

(2) that in the administration of the plan there is a failure to

comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

Special Project Grants for Maternity and Infant Care

Sec. 508. (a) In order to help reduce the incidence of mental retardation and other handicapping conditions caused by complications associated with childbearing and to help reduce infant and maternal mortality, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 502, grants to the State health agency of any State and, with the consent of such agency, to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost (exclusive of general agency overhead) of any project for the provision of—

(1) necessary health care to prospective mothers (including, after childbirth, health care to mothers and their infants) who have or are likely to have conditions associated with childbearing or are in circumstances which increase the hazards to the health of the mothers or their infants (including those which may cause

physical or mental defects in the infants), or

(2) necessary health care to infants during their first year of life who have any condition or are in circumstances which increase the hazards to their health, or

(3) family planning services, but only if the State or local agency determines that the recipient will not otherwise receive such necessary health care or services because he is from a low-income family or for other reasons beyond his control. Acceptance of family planning services provided under a project under this section (and section 512) shall be voluntary on the part of the individual to whom such services are offered and shall not be a prerequisite to the eligibility for or the receipt of any service under such project.

(b) No grant may be made under this section for any project for

any period after June 30, 1972.

Special Project Grants for Health of School and Preschool Children

Sec. 509. (a) In order to promote the health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make, from the sums available under clause (B) of paragraph (1) of section 502, grants to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, to the State agency of the State administering or supervising the administration of the State plan approved under section 505, to any school of medicine (with appropriate participation by a school of dentistry), and to any teaching hospital affiliated with such a school, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for health care and services for children and youth of school age or for preschool children (to help them prepare to start school). No project shall be eligible for a grant under this section unless it provides (1) for the coordination of health care and services provided under it with, and utilization (to the extent feasible) of, other State or local health, welfare, and education programs for such children, (2) for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary) of inpatient hospital services provided under the project, and (3) that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control; and no such project for children and youth of school age shall be considered to be of a comprehensive nature for purposes of this section unless it includes (subject to the limitation in the preceding provisions of this sentence) at least such screening, diagnosis, preventive services, treatment, correction of defects, and aftercare, both medical and dental, as may be provided for in regulations of the Secretary.

(b) No grant may be made under this section for any project for

any period after June 30, 1972.

Special Project Grants for Dental Health of Children

Sec. 510. (a) In order to promote the dental health of children and youth of school or preschool age, particularly in areas with concentrations of low-income families, the Secretary is authorized to make grants, from the sums available under clause (B) of paragraph

(1) of section 502, to the State health agency of any State and (with the consent of such agency) to the health agency of any political subdivision of the State, and to any other public or nonprofit private agency, institution, or organization, to pay not to exceed 75 percent of the cost of projects of a comprehensive nature for dental care and services for children and youth of school age or for preschool children. No project shall be eligible for a grant under this section unless it provides that any treatment, correction of defects, or aftercare provided under the project is available only to children who would not otherwise receive it because they are from low-income families or for other reasons beyond their control, and unless it includes (subject to the limitation of the foregoing provisions of this sentence) at least such preventive services, treatment, correction of defects, and after care, for such age groups, as may be provided in regulations of the Secretary. Such projects may also include research looking toward the development of new methods of diagnosis or treatment, or demonstration of the utilization of dental personnel with various levels of training.

(b) No grant may be made under this section for any project for

any period after June 30, 1972.

Training of Personnel

Sec. 511. From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 502, the Secretary is authorized to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children, particularly mentally retarded children and children with multiple handicaps. In making such grants, the Secretary shall give special attention to programs providing training at the undergraduate level.

Research Projects Relating to Maternal and Child Health Services and Crippled Children's Services

Sec. 512. From the sums available under clause (C) of paragraph (1) or clause (B) of paragraph (2) of section 502, the Secretary is authorized to make grants to or jointly financed cooperative arrangements with public or other nonprofit institutions of higher learning, and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or crippled children's programs, and contracts with public or nonprofit private agencies and organizations engaged in research or in such programs, for research projects relating to maternal and child health services or crippled children's services which show promise of substantial contribution to the advancement thereof. Effective with respect to grants made and arrangements entered into after June 30, 1968, (1) special emphasis shall be accorded to projects which will help in studying the need for, and the feasibility, costs, and effectiveness of, comprehensive health care programs in which maximum use is made of health personnel with varying levels of training, and in studying methods of training for such programs, and (2) grants under this section may also include funds for the training of health personnel for work in such projects.

Administration

Sec. 513. (a) The Secretary of Health, Education, and Welfare shall make such studies and investigations as will promote the efficient

administration of this title.

(b) Such portion of the appropriations for grants under section 501 as the Secretary may determine, but not exceeding one-half of 1 percent thereof, shall be available for evaluation by the Secretary (directly or by grants or contracts) of the programs for which such appropriations are made and, in the case of allotments from any such appropriation, the amount available for allotments shall be reduced accordingly.

(c) Any agency, institution, or organization shall, if and to the extent prescribed by the Secretary, as a condition to receipt of grants under this title, cooperate with the State agency administering or supervising the administration of the State plan approved under title XIX in the provision of care and services, available under a plan or project under this title, for children eligible therefor under such plan

approved under title XIX.

Definition

Sec. 514. For purposes of this title, a crippled child is an individual under the age of 21 who has an organic disease, defect, or condition which may hinder the achievement of normal growth and development.

Observance of Religious Beliefs

Sec. 515. Nothing in this title shall be construed to require any State which has any plan or program approved under, or receiving financial support under, this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan or program for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

TITLE VI—PUBLIC HEALTH WORK

[Note.—This title has been repealed by the Public Health Service Act, approved July 1, 1944 (42 U.S.C., Chap. 6A). See section 314 of that Act (42 U.S.C. 246) for the new provisions on the subject matter formerly included under this title.]

TITLE VII—ADMINISTRATION*

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Office of Commissioner of Social Security

Section 701. [Superseded by section 4 of Reorganization Plan No. 1 of 1953. Section 701 provided for an Office of Commissioner for Social Security. Section 4 of the Plan provides: "There shall be in the Department a Commissioner of Social Security who shall be appointed by the President by and with the advice and consent of the Senate, shall perform such functions concerning social security and public welfare as the Secretary may prescribe, and shall receive compensation at the rate now or hereafter fixed by law for grade GS-18 of the general schedule established by the Classification Act of 1949, as amended."

Duties of the Secretary

Sec. 702. The Secretary of Health, Education, and Welfare 2 shall perform the duties imposed upon him by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.3

Expenses of the Secretary

Sec. 703. The Secretary is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

^{*}Title VII of the Social Security Act (49 Stat. 635) appears in the United States Code as subchapter VII of title 42.

¹ This table does not appear in the law.
² Formerly the Federal Security Administrator. See "Administration of the Social Security Administrator of the Social Security Administrator of the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health, Education, and Welfare), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Administration). Reorganization Plan No. 19 of 1950 (see p. 901, vol. II), transferred the Bureau of Employees' Compensation from the Federal Security Administration (now the Department of Health, Education, and Welfare) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section of the Social Security Act also apply to the Secretary of Labor. Act also apply to the Secretary of Labor.

Reports

Sec. 704. The Secretary shall make a full report to Congress, at the beginning of each regular session, of the administration of the functions with which he is charged under this Act. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

Training Grants for Public Welfare Personnel

Sec. 705. (a) In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of \$3,500,000, and for each fiscal year thereafter the sum of

\$5,000,000.

(b) Such portion of the sums appropriated pursuant to subsection (a) for any fiscal year as the Secretary may determine, but not in excess of \$1,000,000 in the case of the fiscal year ending June 30, 1963, and \$2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f). From the remainder of the sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) From each State's allotment under subsection (b), the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Payments pursuant to subsection (c) shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of over-

payments or underpayments in amounts previously paid.

(e) The amount of any allotment to a State under subsection (b) for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) for the initial allotments

to the States. Any amount so reallotted to a State shall be deemed part

of its allotment under such subsection.

(f) (1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in

amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of this fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this Act.

Advisory Council on Social Security

Sec. 706. (a) During 1969 (but not before February 1, 1969) and every fourth year thereafter (but not before February 1 of such fourth year), the Secretary shall appoint an Advisory Council on Social Security for the purpose of reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program and the programs under parts A and B of title XVIII, and of reviewing the scope of coverage and the adequacy of benefits under, and all other aspects of, these programs, including their impact on the public assistance programs under this Act.

(b) Each such Council shall consist of a Chairman and 12 other persons, appointed by the Secretary 5 without regard to the provisions

⁴P.L. 90-248, sec. 165(a)(1), inserted "During 1969 (but not before February 1, 1969) and every fourth year thereafter (but not before February 1 of such fourth year)" in lieu of "During 1968 and every fifth year thereafter".

⁵P.L. 90-248, sec. 165(b), inserted "shall consist of a Chairman and 12 other persons, appointed by the Secretary" in lieu of "shall consist of the Commissioner of Social Security, as Chairman, and 12 other persons, appointed by the Secretary".

of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers,

and represent self-employed persons and the public.

(c) (1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(2) Appointed members of any such Council, while serving on business of the Council (inclusive of travel time) shall receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

(d) Each such Council shall submit reports (including any interim reports such Council may have issued) of its 8 findings and recommendations to the Secretary not later than January 1 of the second year after the year in which it is appointed, and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds. The reports required by this subsection shall include—

(1) a separate report with respect to the old-age, survivors, and disability insurance program under title II and of the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the

Internal Revenue Code of 1954,

(2) a separate report with respect to the hospital insurance program under part A of title XVIII and of the taxes imposed by sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954, and

(3) a separate report with respect to the supplementary medical insurance program established by part B of title XVIII and of

the financing thereof.

After the date of the transmittal to the Congress of the reports required by this subsection, the Council shall cease to exist.

Grants for Expansion and Development of Undergraduate and Graduate Programs

Sec. 707. (a) There is authorized to be appropriated \$5,000,000 for the fiscal year ending June 30, 1969, and \$5,000,000 for each of the three succeeding fiscal years, for grants by the Secretary to public or nonprofit private colleges and universities and to accredited graduate schools of social work or an association of such schools to meet part of the costs of development, expansion, or improvement of (respectively) undergraduate programs in social work and programs for the graduate training of professional social work personnel, in-

⁶ P.L. 90-248, sec. 403(d) (1), inserted "the provisions of title 5, United States Code, governing appointments in the competitive service" in lieu of "the civil service laws".

⁷ P.L. 90-248, sec. 403(d) (2), inserted "section 5703 of title 5, United States Code" in lieu of "section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2)".

⁸ P.L. 90-248, sec. 165(a) (2), inserted "reports (including any interim reports such Council may have issued) of its" in lieu of "reports of its".

cluding the costs of compensation of additional faculty and administrative personnel and minor improvements of existing facilities. Not less than one-half of the sums appropriated for any fiscal year under the authority of this subsection shall be used by the Secretary for grants with respect to undergraduate programs.

(b) In considering applications for grants under this section, the Secretary shall take into account the relative need in the States for personnel trained in social work and the effect of the grants thereon.

(c) Payment of grants under this section may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

(d) For purposes of this section—

(1) the term "graduate school of social work" means a department, school, division, or other administrative unit, in a public or nonprofit private college or university, which provides, primarily or exclusively, a program of education in social work and allied subjects leading to a graduate degree in social work;

(2) the term "accredited" as applied to a graduate school of social work refers to a school which is accredited by a body or bodies approved for the purpose by the Commissioner of Education or with respect to which there is evidence satisfactory to the Secretary that it will be so accredited within a reasonable time; and

(3) the term "nonprofit" as applied to any college or university refers to a college or university which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT

[Note.—The provisions of this title are now contained in, and are superseded by, chapter 21 of the Internal Revenue Code of 1954.]

⁹ P.L. 90-248, sec. 401, inserted section 707.

TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY 1

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Employment Security Administration Account

Establishment of Account

Section 901. (a) There is hereby established in the Unemployment Trust Fund an employment security administration account.

Appropriations to Account

(b) (1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act 3 and covered into the Treasury.

Title IX is administered by the United States Department of Labor. Title IX of the Social Security Act appears in the United States Code as sees. 1101-1105 of Title 42.
 This table of contents does not appear in the law.
 Chapter 23, Internal Revenue Code of 1954; title 23 United States Code.

(2) The amount appropriated by paragragh (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act

(including interest on such refunds).

Administrative Expenditures

(c) (1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1964, and for each fiscal year thereafter—

(A) such amounts (not in excess of the limit provided by paragraph (3)) as the Congress may deem appropriate for the pur-

pose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law, except the Temporary Unemployment Compensation Act of 1958, as amended),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of June 6, 1933, as amended (29 U.S.C., secs. 49–49n), 4 and

(iii) carrying into effect section 2012 of title 38 of the

United States Code:

(B) such amounts as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this title and titles III and XII of this Act,

(ii) the Federal Unemployment Tax Act,

(iii) the provisions of the Act of June 6, 1933, as amended, (iv) subchapter II of chapter 41 (except section 2012) of

title 38 of the United States Code, and

(v) any Federal unemployment compensation law, except the Temporary Unemployment Compensation Act of 1958, as amended.

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem

⁴ The Wagner-Peyser Act, see p. 968, vol. II.

⁹⁰⁻²⁷⁵ O-68-pt. 1-15

in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the

Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this title and titles III and XII of this Act, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of

balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act, and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the

Secretary of Labor.

In determining the expenses taken into account under subparagraphs (B) and (C), there shall be excluded any amount attributable to the Temporary Unemployment Compensation Act of 1958, as amended. If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year is—

(A) in the case of the fiscal year ending June 30, 1964, an amount equal to 95 percent of the amount estimated by the Secretary of the Treasury as the net receipts during such fiscal year

under the Federal Unemployment Tax Act, and

(B) in the case of any fiscal year thereafter, an amount equal to 95 percent of the amount estimated and set forth in the Budget of the United States Government for such fiscal year as the net receipts during such year under the Federal Unemployment Tax Act.

Each estimate of net receipts under this paragraph shall be based on a tax rate of 0.4 percent. The Secretary of the Treasury shall report his estimate under subparagraph (Å) to the Congress within 30 days after the date of the enactment of this paragraph. Such report shall be printed as a House document.

Additional Tax Attributable to Reduced Credits

(d) (1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal

to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credits provisions of section 3302(c) (2) or (3) of such Act and covered into the Treasury for the repayment of advances made to the State under section 1201, exceeds

(ii) the amount transferred to the account of such State

pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1201 to the State, with respect to

which employers paid such additional tax.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

If, for any taxable year, there is with respect to any State both a balance described in section 3302(c)(2) of the Federal Unemployment Tax Act and a balance described in section 3302(c)(3) of such Act, this paragraph shall be applied separately with respect to section 3302(c)(2) (and the balance described therein) and separately with respect to section 3302(c)(3) (and the balance described therein).

(2) The Secretary of the Treasury is directed to transfer from the

employment security administration account—

(A) To the general fund of the Treasury, an amount equal to

the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act with respect to any State by reason of the reduced credit provision of section 104 of the Temporary Unemployment Compensation Act of 1958,⁵ as amended, and covered into the Treasury, exceeds

(ii) the amount transferred to the account of such State

pursuant to subparagraph (B) of this paragraph.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which—

(i) such aditional tax received and covered into the Treas-

ury, exceeds

(ii) the total amount restorable to the Treasury under section 104 of the Temporary Unemployment Compensation Act of 1958, as amended, as limited by Public Law 85–457.

(3) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b) (2).

Revolving Fund

(e) (1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year is

⁵ The Temporary Unemployment Compensation Act of 1958 has expired, except for the provisions of sec. 104 on repayment of expenses incurred under the Act. See p. 905, vol. II.

\$250,000,000, no advance may be made under this subsection during

such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

Determination of Excess and Amount To Be Retained in Employment Security Administration Account

(f) (1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2) The excess in the employment security administration account as of the close of any fiscal year is the amount by which the net balance in such account as of such time (after the application of section 902(b)) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(3) If the entire amount of the excess determined under paragraph (1) as of the close of any fiscal year is not transferred to the Federal unemployment account, there shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account so much of the remainder as does not increase the net balance in such account (as of the beginning of such succeeding fiscal

year) above \$250,000,000.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsec-

tion (d), and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e).

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

Transfers Between Federal Unemployment Account and Employment Security Administration Account

Transfers to Federal Unemployment Account

Sec. 902. (a) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year, there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the total amount of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) \$550,000,000, or

(2) The amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to fourtenths of 1 per centum of the total wages subject to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

Transfers to Employment Security Administration Account

(b) The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) shall be transferred to the employment security administration account as of the close of such fiscal year.

Amounts Transferred to State Accounts

In General

Sec. 903. (a) (1) Except as provided in subsection (b), whenever, after the application of section 1203 with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, the remainder of such excess shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State's share of the funds to be transferred under this

subsection as of any July 1—

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before June 1, and

(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under

such State's unemployment compensation law during the preceding calendar year which have been reported to the State before May 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before May 1.

Limitation on Transfers

(b) (1) If the Secretary of Labor finds that on July 1 of any fiscal year—

(A) a State is not eligible for certification under section 303, or(B) the law of a State is not approvable under section 3304

of the Federal Unemployment Tax Āct, then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such July 1. If, during the fiscal year beginning on such July 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 303, that the law of such State is approvable under such section 3304, or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of July 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1201. The sum by which

such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before the date of the enactment of the Employment Security Act of 1960 to the State under section 1201, and

(ii) second, any balance of advances made on or after

such date to the State under sector 1201.

Use of Transferred Amounts

(c) (1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law mak-

ing the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred

after such date of enactment, and

(D) the appropriation law limits the total amount which may be obligated during a fiscal year to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) during such fiscal year and the nine preceding fiscal years, exceeds (ii) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State during such ten fiscal years.

For the purposes of subparagraph (D), amounts used by a State during any fiscal year shall be charged against equivalent amounts which were first transferred and which have not previously been so charged; except that no amount obligated for administration during any fiscal year may be charged against any amount transferred during

a fiscal year earlier than the ninth preceding fiscal year.

Unemployment Trust Fund

Establishment, etc.

Sec. 904. (a) There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depository designated by him for such purpose, or with any Federal Reserve Bank.

Investments

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate

is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1203 shall not be invested.

Sale or Redemption of Obligations

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

Treatment of Interest and Proceeds

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

Separate Book Accounts

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made

to the State under section 1201, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate

of the reductions under paragraph (1), and

(B) by subtracting from the sum so obtained the balance of advances made under section 1203 to the account.

Payments to State Agencies and Railroad Retirement Board

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund of any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

Federal Unemployment Account

(g) There is hereby established in the Unemployment Trust Fund a Federal unemployment account. There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act, over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term "unemployment administrative expenditures" means expenditures for grants under title III of this Act, expenditures for the administration of that title by the Social Security Board, the Federal Security Administrator, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act, by the Department of the Treasury, the Social Security Board, the Federal Security Administrator, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of \$40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937 (50 Stat. 754), and the sum of \$18,451,846 which was authorized to be appropriated by section 11(b) of the Railroad Unemployment Insurance Act.

Federal Extended Compensation Account

Establishment of Account

Sec. 905. (a) There is hereby established in the Unemployment Trust Fund a Federal extended compensation account. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account. There are hereby authorized to be appropriated, without fiscal year limitation, such amounts as may be necessary to make the payments of compensation provided by sections 3 and 8 of the Temporary Extended Unemployment Compensation Act of 1961 and the reimbursements provided by section 4 of such Act. The amounts so appropriated shall be transferred from time to time to the Federal extended compensation account on the basis of estimates by the Secretary of the Treasury after consultation with the Secretary of Labor of the amounts required to make such payments and reimbursements. Amounts so transferred shall be repayable advances (without interest), except to the extent that such amounts are used to make the payments of compensation provided by sections 3 and 8 of the Temporary Extended Unemployment Compensation Act of 1961 to individuals by reason of the exhaustion of their rights to unemployment compensation under title XV. Such repayable advances shall be repaid by transfers, from the Federal extended compensation account to the general fund of the Treasury, at such times as the amount in the Federal extended compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose.

Transfers to Account

(b) The Secretary of the Treasury shall transfer (as of the close of each month in the calendar years 1963 and 1964), from the employment security administration account to the Federal extended compensation account established by subsection (a), an amount determined by him to be equal to 50 percent (with respect to the calendar year 1963), or 5/13 (with respect to the calendar year 1964), of the amount by which—

(1) transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

(2) payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in paragraph (2) exceed the transfers referred to in paragraph (1), proper adjustments shall be made in the amounts subsequently transferred.

Transfers to State Accounts

(c) (1) The Secretary of the Treasury shall transfer (as of December 31, 1963), from the Federal extended compensation account to the accounts of the States in the Unemployment Trust Fund, the balance in the Federal extended compensation account as of such date. Such balance shall be determined by deducting from the amount in the account on December 31, 1963, the amount of the outstanding advances made to such account pursuant to subsection (a).

(2) Each State's share of the balance to be transferred under this

subsection-

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of

Labor before December 1, 1963, and

(B) shall bear the same ratio to the balance in such account as of December 31, 1963, as (i) the amount of wages subject to contributions under such State's unemployment compensation law during 1961 and 1962 which have been reported to the State before May 1, 1963, bears to (ii) the total of wages subject to contributions under all State unemployment compensation laws during 1961 and 1962 which have been reported to the States before May 1, 1963.

Termination of Account

(d) Except as provided by subsection (c), no transfer to or from the Federal extended compensation account shall be made after December 31, 1964.

TITLE X—GRANTS TO STATES FOR AID TO THE BLIND 1 2

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Appropriation

Section 1001. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the blind.

State Plans for Aid to the Blind

Sec. 1002. (a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not

¹Title X is administered by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. Title X of the Social Security Act appears in the United States Code as secs. 1201-1206 of title 42.

P.L. 87-543, sec. 141(b), effective July 25, 1962, provides that no payment may be made to a State under title X of the Social Security Act for any period for which such State receives any payments under title XVI of the Act or any period thereafter.

See footnote 1 of title I for provisions of the Economic Opportunity Act and the Food Stamp Act affecting a State plan approved under this title X.

See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting Federally assisted programs.

P.L. 90-248, sec. 234(c), provides:

"(c) Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for on account of any nursing home services provided by such nursing home for appeared during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements."

2 See sec. 121(b) of P.L. 89-97 on p. 510, vol. II.

3 This table of contents does not appear in the law.

acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; 4 (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act or aid to families with dependent children under the State plan approved under section 402 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first \$85 per month of earned income, plus one-half of earned income in excess of \$85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than \$7.50 of any income; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the blind; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State

⁴P.L. 90-248, sec. 210(a)(3), added subclause (B); effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with this amendment is approved.

is approved.

⁵ P.L. 90-248, sec. 213(a)(2), deleted "\$5" and inserted "\$7.50".

⁶ See section 1109, p. 239, this volume, for modification of this clause. See also footnote 1 of this title.

⁷ See footnote 7 of title I.

authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the

blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of

the United States.

In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this title, the Secretary shall approve a plan of such State for aid to the blind for purposes of this title, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this title for an approved plan for aid to the blind; but payments under section 1003 shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1003 under a plan approved under this section without regard to the provisions of this sentence.

Payments to States

Sec. 1003. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter com-

mencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) $^{3}V_{37}$ of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$37 multiplied by the total number of recipients of aid to the blind for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the blind in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in

such month as aid to the blind in the form of medical or any

other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of \$75 multiplied by the total number of such recipients of aid to the blind for such month; ⁸ and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the blind for such month; and 9

(3) in the case of any State whose State plan approved under section 1002 meets the requirements of subsection (c)(1) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and

efficient administration of the State plan-

(A) 75 per centum of so much of such expenditures as are

for-

(i) services which are prescribed pursuant to subsecsection (c) (1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such

applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the blind, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivi-

sion; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided

⁸ Pursuant to sec. 9 of the Act of April 19, 1950 (64 Stat. 44, 47), the Secretary of the Treasury must also pay to States, in addition to the amounts provided by sec. 1003(a) of the Social Security Act, an amount equal to 80 percent of the State share of assistance expenditures under the State plan with respect to Navajo and Hopi Indians.

⁹ See secs. 1108, 1118, 1119, and 1121, title XI, pp. 238, 239, and 246, this volume.

(in accordance with the next sentence) to applicants for or recipients of aid to the blind, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (Å) and (B) shall, except to the extent specified by the Secretary, 10 include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by

such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or

nonprofit private agencies); except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and pro-

cedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1002 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.¹¹

 ¹⁰ P.L. 90-248, sec. 212(b), inserted "except to the extent specified by the Secretary,"; effective January 1, 1968.
 11 See secs. 1108, 1118, 1119, and 1121, title XI, pp. 238, 239, and 246, this volume,

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find

necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: Provided, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service ¹² of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health,

Education, and Welfare, the amounts so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a), its State plan approved under section 1002 must provide that the State agency shall make available to applicants for or recipients of aid to the blind at least those services to

¹² The Division of Disbursement was consolidated in the Fiscal Service of the Treasury Department by Reorganization Plan No. III, sec. 1(a), effective June 30, 1940 (54 Stat. 1231).

help them attain or retain capability for self-support or self-care

which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that-

(A) the provision has been so changed that it no longer com-

plies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to

comply substantially with such provision, the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (4) of such subsection.

Operation of State Plans 13

Sec. 1004. In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds-

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency,

in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section

1002 (a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) 14 until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure). 15

Administration

Sec. 1005. [Executed. Authorized appropriation for administrative expenses of the Social Security Board for the fiscal year ending June 30, 1936.]

 ¹³ See section 1116, title XI, p. 243, this volume.
 ¹⁴ P.L. 90-248, sec. 245(1), inserted the parenthetical clause.
 ¹⁵ P.L. 90-248, sec. 245(2), substituted this sentence in lieu of "Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State."

Definition

Sec. 1006. For the purpose of this title, the term "aid to the blind" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1002 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide

such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible,

his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual

with respect to whom it is made.

TITLE XI—GENERAL PROVISIONS* Page 1 Sec. 1101. Definitions______ 233Sec. 1102. Rules and Regulations. 235 Sec. 1103. Separability_____ 235 Sec. 1104. Reservation of Power_____ 235 Sec. 1104. Reservation of Tower
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Definitions

Section 1101. (a) When used in this Act—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in titles I, IV, V, VII, X, XI, XIV, XVI, and XIX includes the Virgin Islands and Guam.

(2) The term "United States" when used in a geographical sense

means, except where otherwise provided, the States.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock com-

panies, and insurance companies.

(5) The term "shareholder" includes a member in an association,

joint-stock company, or insurance company.

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare.

^{*}Title XI of the Social Security Act appears in the United States Code as secs, 1301-1321 of subchapter XI, title 42.

This table does not appear in the law.

See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting Federally assisted programs.

(7) The terms "physician" and "medical care" and "hospitalization" include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as de-

fined by State law.

(8) (A) The "Federal percentage" for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between July 1 and August 31 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the eight quarters in the period beginning July 1 next succeeding such promulgation: *Provided*, That the Secretary shall promulgate such percentage as soon as possible after the enactment of the Social Security Amendments of 1958, which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term "United States" means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and

the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the "United States". Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things

otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the pro-

visions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

Rules and Regulations

Sec. 1102. The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Eduction, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

Separability

Sec. 1103. If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Reservation of Power

Sec. 1104. The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

Short Title

Sec. 1105. This Act may be cited as the "Social Security Act."

Disclosure of Information in Possession of Department

Sec. 1106. (a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939, or under chapter 2 or 21 or, pursuant thereto, under subtitle F of the Internal Revenue Code of 1954, or under regulations made under authority thereof, which has been transmitted to the Secretary of Health, Education, and Welfare by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Secretary or by any officer or employee of the Department of Health, Education, and Welfare in the course of discharging the duties of the Secretary under this Act, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Secretary or from any officer or employee of the Department of Health, Education, and Welfare, shall be made except as the Secretary may by regulations prescribe. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by

a fine not exceeding \$1,000, or by imprisonment not exceeding one

year, or both.2

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary to avoid undue interference with his functions under this Act, be complied with if the agency, person, or organization making the request agrees to pay for the information or services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare which furnished the information or services.3

(c) (1) (A) Upon request (filed in accordance with paragraph (2) of this subsection) of any State or local agency participating in administration of the State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV,4 or participating in the administration of any other State or local public assistance program, for the most recent address of any individual included in the files of the Department of Health, Education, and Welfare maintained pursuant to section 205, the Secretary shall furnish such address, or the address of the most

recent employer, or both, if such agency certifies that-

(i) an order has been issued by a court of competent jurisdiction against such individual for the support and maintenance of his child or children who are under the age of 16 in destitute or necessitous circumstances,

(ii) such child or children are applicants for or recipients of

assistance available under such a plan or program,

(iii) such agency has attempted without success to secure such information from all other sources reasonably available to it, and

(iv) such information is requested (for its own use, or on the request and for the use of the court which issued the order) for the purpose of obtaining such support and maintenance.

(B) If a request for the most recent address of any individual so included is filed (in accordance with paragraph (2) of this subsection)

² Reorganization Plan No. 2 of 1949 (see p. 899, vol. II) transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health, Education, and Welfare), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Administration). Reorganization Plan No. 19 of 1950 (see p. 901, vol. II) transferred the Bureau of Employees' Compensation from the Federal Security Administration (now the Department of Health, Education, and Welfare) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section of the Social Security Act also apply to the Secretary of Labor.

³ See footnote 2, above.

⁴ P.L. 90-248, sec. 241(c)(1), deleted "IV," which appeared before the numeral "X", and inserted "or part A of title IV,".

by a court having jurisdiction to issue orders or entertain petitions against individuals for the support and maintenance of their children, the Secretary shall furnish such address, or the address of the individual's most recent employer, or both, for the use of the court (and for no other purpose) in issuing or determining whether to issue such an order against such individual or in determining (in the event such individual is not within the jurisdiction of the court) the court to which a petition for support and maintenance against such individual should be forwarded under any reciprocal arrangements with other States to obtain or improve court orders for support, if the court certifies that the information is requested for such use.⁵

(2) A request under paragraph (1) shall be filed in such manner and form as the Secretary may prescribe (and, in the case of a request under paragraph (1)(A), shall be accompanied by a certified copy of

the order referred to in clauses (i) and (iv) thereof).6

(3) The penalties provided in the second sentence of subsection (a) shall apply with respect to use of information provided under paragraph (1) of this subsection except for the purpose authorized

by subparagraph (A) (iv) or $(B)^7$ thereof.

(4) The Secretary, in such cases and to such extent as he may prescribe in accordance with regulations, may require payment for the cost of information provided under paragraph (1); and the provisions of the second sentence of subsection (b) shall apply also with respect to payment under this paragraph.

Penalty for Fraud

Sec. 1107. (a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this Act, subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code of 1939, or chapter 2, 21, or 23 or section 6011(a), 6017, or 6051(a) of the Internal Revenue Code of 1954 or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding

one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary of Health, Education, and Welfare that he is such individual, or the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding \$1,000, or by imprisonment not exceeding one year, or both.

⁵P.L. 90-248, sec. 168(a), inserted "(A)" after "(c) (1)", redesignated subparagraphs (A) through (D) as clauses (1) through (iv), respectively, and added subparagraph (B).

⁶P.L. 90-248, sec. 168(b) (1), inserted the parenthetical phrase at the end of paragraph (2) in lieu of ", and shall be accompanied by a certified copy of the order referred to in paragraph (1) (A)".

⁷P.L. 90-248, sec. 168(b) (2), inserted "subparagraph (A) (iv) or (B)" in lieu of "subparagraph (D)".

Limitation on Payments to Puerto Rico, the Virgin Islands, and Guam

Sec. 1108. (a) The total amount certified by the Secretary of Health, Education, and Welfare under title I, X, XIV, and XVI, and under part A of title IV (exclusive of any amounts on account of services and items to which subsection (b) applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) \$12,500,000 with respect to the fiscal year 1968,
(B) \$15,000,000 with respect to the fiscal year 1969,
(C) \$18,000,000 with respect to the fiscal year 1970,
(D) \$21,000,000 with respect to the fiscal year 1971, or

(E) \$24,000,000 with respect to the fiscal year 1972 and

each fiscal year thereafter;

(2) for payment to the Virgin Islands shall not exceed—

(A) \$425,000 with respect to the fiscal year 1968,
(B) \$500,000 with respect to the fiscal year 1969,
(C) \$600,000 with respect to the fiscal year 1970,
(D) \$700,000 with respect to the fiscal year 1971, or

(E) \$800,000 with respect to the fiscal year 1972 and each

fiscal year thereafter; and

(3) for payment to Guam shall not exceed—

(A) \$575,000 with respect to the fiscal year 1968,
(B) \$690,000 with respect to the fiscal year 1969,
(C) \$825,000 with respect to the fiscal year 1970,

(D) \$960,000 with respect to the fiscal year 1971, or (E) \$1,100,000 with respect to the fiscal year 1972 and

each fiscal year thereafter.

(b) The total amount certified by the Secretary under part A of title IV, on account of family planning services and services provided under section 402(a) (19) with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed \$2,000,000, (2) for payment to the Virgin Islands shall not exceed

\$65,000, and

(3) for payment to Guam shall not exceed \$90,000.

(c) The total amount certified by the Secretary under title XIX with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed \$20,000,000, (2) for payment to the Virgin Islands shall not exceed \$650,-

000, and

(3) for payment to Guam shall not exceed \$900,000.

(d) Notwithstanding the provisions of sections 502(a) and 512(a) of this Act, and the provisions of sections 421, 503(1), and 504(1) of this Act as amended by the Social Security Amendments of 1967, and until such time as the Congress may by appropriation or other law otherwise provide, the Secretary shall, in lieu of the initial allotment specified in such sections, allot such smaller amounts to Guam as he may deem appropriate. §

^{*}P.L. 90-248, sec. 248(a), amended section 1108 in its entirety with respect to fiscal years beginning after June 30, 1967. For section 1108 as it read prior to this amendment, see p. 700, vol. II.

Amounts Disregarded Not To Be Taken Into Account in Determining Eligibility of Other Individuals

Sec. 1109. Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV, shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such titles.

Cooperative Research or Demonstration Projects

Sec. 1110. (a) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, \$5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (1) making grants to States and public and other nonprofit organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under the Social Security Act and programs related thereto, and (2) making contracts or jointly financed cooperative arrangements with States and public and other 10 organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(b) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under subsection (a), until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed project as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or

demonstrations already completed or in process.

(c) Grants and payments under contracts or cooperative arrangements under subsection (a) may be made either in advance or by way of reimbursement, as may be determined by the Secretary; and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purposes of this section.

Public Assistance Payments to Legal Representatives

Sec. 1111. For purposes of title I, X, XIV, and XVI, and part A of title IV,11 payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments

⁹P.L. 90-248, sec. 241(c)(2), deleted "IV," which appeared before the numeral "X", and inserted ", or part A of title IV,".

¹⁰P.L. 90-248, sec. 246, deleted "nonprofit" which appeared before the word "organizations".

¹¹P.L. 90-248, sec. 241(c)(3), deleted "IV," which appeared before the numeral "X," and inserted "and part A of title IV,".

(whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

Medical Care Guides and Reports for Public Assistance and Medical Assistance

Sec. 1112. In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this Act and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

Assistance for United States Citizens Returned From Foreign Countries

Sec. 1113. (a) (1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to

cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a) (1). Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under sub-

section (a) shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the

Secretary.

(c) For purposes of this section, the term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival as may be provided in regulations of the Secretary.

(d) No temporary assistance may be provided under this section

after June 30, 1969.12

Appointment of Advisory Council and Other Advisory Groups

Sec. 1114. (a) The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this Act and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) The Council shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service 13 and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications

with respect to such programs, and members of the public.

(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(d) The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of the Social Security Act) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council

shall cease to exist.

¹² P.L. 90-36, sec. 2, enacted June 29, 1967, deleted "June 30, 1967" and inserted in lieu thereof "June 30, 1968". P.L. 90-248, sec. 503, deleted "1968" and inserted in lieu thereof "1969."

13 P.L. 90-248, sec. 403(e)(1), inserted "the provisions of title 5, United States Code, governing appointments in the competitive service" in lieu of "the civil service laws".

(e) The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so appointed shall report its findings and recommendations, as prescribed in subsection (d), not later than July 1 of the second year after the vear in which it is appointed, after which date such Council shall cease to exist.

(f) The Secretary may also appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service 14, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this Act. The Secretary shall report to the Congress annually on the number of such committees and on the membership

and activities of each such committee.

(g) Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code 15 for persons in Government service employed intermittently.

(h) (1) Any member of the Council or any advisory committee appointed under this Act, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914 of title 18 of the United States Code, and section 190 of the Revised Statutes (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this

subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

Demonstration Projects 16

Sec. 1115. In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title I, X, XIV, XVI, or XIX, or part A of title IV, 17 in a State or States—

¹⁴ P.L. 90-248, sec. 403(e) (2), inserted "the provisions of title 5, United States Code, governing appointments in the competitive service" in lieu of "the civil service laws".

15 P.L. 90-248, sec. 403(e) (3), inserted "section 5703 of title 5, United States Code" in lieu of "section 5 of the Administrative Expenses Act of 1946 (5 U.S.C. 73b-2)".

16 See section 502 of the Economic Opportunity Act of 1964, p. 792, vol. II.

17 P.L. 90-248, sec. 241(c) (4), inserted ", or part A of title IV," and deleted "IV," which appeared before the numeral "X".

(a) the Secretary may waive compliance with any of the requirements of section 2, 402, 1002, 1402, 1602, or 1902 as the case may be, to the extent and for the period he finds necessary to en-

able such State or States to carry out such project, and

(b) costs of such project which would not otherwise be included as expenditures under section 3, 403, 1003, 1403, 1603, or 1903 as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans, as may be appropriate.

In addition, not to exceed \$4,000,000 18 of the aggregate amount appropriated for payments to States under such titles for any fiscal year beginning after June 30, 1967,19 shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of

projects for purposes of section 1110.

Administrative and Judicial Review of Certain Administrative Determinations

Sec. 1116. (a) (1) Whenever a State plan is submitted to the Secretary by a State for approval under title I, X, XIV, XVI, or XIX, or part A of title IV,20 he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such title. The 90day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such title. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 4, 404, 1004, 1404, 1604, or 1904 may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is

¹⁸ P.L. 90-248, sec. 247 (1), inserted "\$4,000,000" in lieu of "\$2,000,000".

¹⁹ P.L. 90-36, enacted June 29, 1967, inserted "July 1, 1968" in lieu of "July 1, 1967".

P.L. 90-248, sec. 247(2), inserted "beginning after June 30, 1967" in lieu of "ending prior to July 1.1968".

²⁰ P.L. 90-248, sec. 241(c) (5) (A), deleted "IV," which appeared before the numeral "X", and inserted "or part A of title IV,".

located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in

section 2112 of title 28, United States Code.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certification as provided in section 1254 of

title 28, United States Code.

(b) For the purposes of subsection (a), any amendment of a State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV,21 may, at the option of the State, be treated as the submis-

sion of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under title I, X, XIV, XVI, or XIX, or part A of title IV,22 shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

Sec. 1117. [Repealed.] 23

Alternative Federal Payment With Respect to Public Assistance Expenditures

Sec. 1118. In the case of any State which has in effect a plan approved under title XIX for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with June 30), under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1905), instead of the percentages provided under each such sec-

²¹ P.L. 90-248, sec. 241(c)(5)(B), deleted "IV," which appeared before the numeral "X", and inserted ", or part A of title IV,".

² See footnote 21, above.

²³ P.L. 90-248, sec. 221(d), repealed section 1117 effective July 1, 1968. For section 1117 as it read prior to its repeal, see p. 701, vol. II.

tion, to the expenditures under its State plans approved under titles I, X, XIV, and XVI, and part A of title IV,24 which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections.

Federal Participation in Payments for Repairs to Home Owned by Recipient of Aid or Assistance 25

Sec. 1119. In the case of an expendture for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under

title I, X, XIV, or XVI, or part A of title IV if-

(1) the State agency or local agency administering the plan approved under such title has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home

pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 3(a), 403(a), 1003(a), 1043(a), or 1603(a) shall be increased by 50 per centum of such expenditures, except that the excess above \$500 expended with respect to any one home shall not be included in determining such expenditures.

Approval of Certain Projects 26

Sec. 1120. (a) No payment shall be made under this Act with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this Act (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health, Education, and Welfare.

(b) As soon as possible after the approval of any project under subsection (a), the Secretary shall submit to the Congress a description of such project including a statement of its purpose, probable cost, and

expected duration.

 ²⁴ P.L. 90-248, sec. 241(c) (7), deleted "IV," which appeared before the numeral "X" and inserted "and part A of title IV,".
 25 P.L. 90-248, sec. 209(a), added section 1119, applicable with respect to expenditures made after December 31, 1967.
 26 P.L. 90-248, sec. 249, added section 1120.

Assistance in the Form of Institutional Services in Intermediate Care Facilities 27

Sec. 1121. (a) Any State which has in effect a plan for old-age assistance, approved under title I, a plan for aid to the blind, approved under title X, a plan for aid to the permanently and totally disabled, approved under title XIV, or a plan for aid to the aged, blind, or disabled, approved under title XVI, may, on or after January 1, 1968, modify such plan to include therein benefits in the form of institutional services in intermediate care facilities for individuals who are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to assistance, under such plan, in the form of money payments.

(b) Any modification pursuant to subsection (a) shall provide that benefits in the form of institutional services in intermediate care facili-

ties will be provided only to individuals who—

(1) are entitled (or would, if not receiving institutional services in intermediate care facilities, be entitled) to receive aid or assistance, under the State plan, in the form of money payments;

(2) because of their physical or mental condition (or both), require living accommodations and care which, as a practical matter, can be made available to them only through institutional facilities; and

(3) do not have such an illness, disease, injury, or other condition as to require the degree of care and treatment which a hospital or skilled nursing home (as that term is employed in title

XIX) is designed to provide.

(c) Payments to any State which modifies its approved State plan (referred to in subsection (a)) to provide, to the recipients of aid or assistance thereunder, benefits in the form of institutional services in intermediate care facilities shall be made in the same manner and from the same appropriation as payments made with respect to expenditures under the State plan so modified, except that, with respect to expenditures made by the State in paying the cost of benefits in the form of institutional services in intermediate care facilities for any quarter, the Secretary shall, if the State so elects, pay to each State an amount equal to the Federal medical assistance percentage (as defined in section 1905(b)).

(d) Except when inconsistent with the purposes of this section or contrary to any provision of this section, any modification, pursuant to this section, of an approved State plan shall be subject to the same conditions, limitations, rights, and obligations as obtain with respect

to such approved State plan.

(e) For purposes of this section, the term "intermediate care facility" means an institution or distinct part thereof which (1) is licensed,

²⁷ P.L. 90-248, sec. 250(a), added section 1121.

under State law, to provide the patients or residents thereof, on a regular basis, the range or level of care and services which is suitable to the needs of individuals described in subsection (b) (2) and (3), but which does not provide the degree of care required to be provided by a skilled nursing home furnishing services under a State plan approved under title XIX, and (2) meets such standards of safety and sanitation as are applicable to nursing homes under State law; except that in no case shall such term include an institution which does not regularly provide a level of care and service beyond room and board. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State.

TITLE XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS 1

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Advance to State Unemployment Funds

Section 1201. (a) (1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, without interest, in the manner provided in sections 901 (d) (1), 903 (b) (2), and 1202. An advance to a State for the payment of compensation in any month may be made if—

(A) the Governor of the State applies therefor no earlier than

the first day of the preceding month, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in such month.

(2) In the case of any application for an advance under this sec-

tion to any State for any month, the Secretary of Labor shall-

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in such month, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State)

determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any month shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of Labor is available in the Federal unemployment account for advances with respect to such month.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this title,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allow-

¹ Title XII is administered by the United States Department of Labor, Title XII of the Social Security Act appears in the United States Code as secs. 1321-1324 of subchapter XII, title 42.

This table does not appear in the law.

ance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

C) the term "compensation" means cash benefits payable to individuals with respect to their unemployment, exclusive of ex-

penses of administration.
(b) The Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 903(b)(1).

Repayment by States of Advances to State Unemployment Funds

Sec. 1202. The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1201, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

Advances to Federal Unemployment Account

Sec. 1203. There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of this title. Whenever, after the application of section 901(f)(3) with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances.

Definition of Governor

Sec. 1204. When used in this title, the term "Governor" includes the Commissioners of the District of Columbia.3

TITLE XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN

[This title was added by the 1946 Amendments; however, the program provided by this title has expired.]

³ Functions performed by the Commissioners of the District of Columbia were transferred to the Commissioner of the District and to the District of Columbia Council by secs. 401-402 of Reorganization Plan No. 3 of 1967.

TITLE XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED 1

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Appropriation

Section 1401. For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the permanently and totally disabled.

State Plans for Aid to the Permanently and Totally Disabled

Sec. 1402. (a) A State plan for aid to the permanently and totally disabled must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment

¹Title XIV is administered by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. Title XIV of the Social Security Act appears in the United States Code as secs. 1351–1355 of Title 42.

P.L. 87–543, sec. 141(b), effective July 25, 1962, provides that no payment may be made to a State under title XIV of the Social Security Act for any period for which such State receives any payments under title XVI of the Act or any period thereafter.

See footnote 1 of title I for provisions of the Economic Opportunity Act and the Food Stamp Act affecting a State plan approved under this title XIV.

See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting federally assisted programs.

assisted programs.

assisted programs.

See also sec. 121(b) of P.L. 89-97, on p. 510, vol. II, for restriction on payment to States receiving payment under title XIX.

P.L. 90-248, sec. 234(e), provides:

"(c) Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements."

2 This table of contents does not appear in the law.

or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; 3 (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act, aid to families with dependent children under the State plan approved under section 402 of this Act, or aid to the blind under the State plan approved under section 1002 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than \$7.50 4 of any income, (B) of the first \$80 per month of additional income which is earned the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; 5 (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the permanently and totally disabled; 6 (10) provide that all individuals wishing to make application for aid to the permanently

³P.L. 90-248, sec. 210(a) (4), added subclause (B); effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with this amendment is approved.

⁴P.L. 90-248, sec. 213(a) (3), deleted "\$5" and inserted "\$7.50".

⁵ See section 1109, p. 239, for modification of this clause. See also footnote 1 of this

⁵ See section 1109, p. 239, for modification of this clause. See also footnote 1 of this title.

• See footnote 7, title I.

and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the

permanently and totally disabled under the plan-

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of

the United States.

Payments to States

Sec. 1403. (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, begin-

ning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any

other type of remedial care or the cost thereof) -

(A) 31/37 of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of \$37 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the permanently and totally disabled in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the permanently and totally disabled in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of \$75 multiplied by the total number of such recipients of aid to the permanently and totally disabled for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such months; 7 and

(3) in the case of any State whose State plan approved under section 1402 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and

efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are

for—

(i) services which are prescribed pursuant to subsection (c)(1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such

applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the permanently and totally disabled, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivi-

sion; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

⁷ See also section 1108 of title XI on p. 239, this volume.

(C) one-half of the remainder of such expenditures. The services referred to in subparagraphs (A) and (B) shall except to the extent specified by the Secretary, include only-8

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: Provided, That no funds authorized under this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1402 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.9

(b) The method of computing and paying such amounts shall be

as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of sub-

⁸ P.L. 90-248, sec. 212(c), inserted "except to the extent specified by the Secretary,"; effective January 1, 1968.

⁹ See sections 1108, 1118, 1119, and 1121; title XI, pp. 238, 239, and 246, this volume.

section (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation

as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: Provided, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service ¹⁰ of the Treasury Department, and prior to audit or settlement by the General Accounting Office, paid to the State, at the time or times fixed by the Secretary of Health,

Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a), its State plan approved under section 1402 must provide that the State agency shall make available to applicants for or recipients of aid to the permanently and totally disabled at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the adminis-

tration of such plan, that—

¹⁰ The Division of Disbursement was consolidated in the Fiscal Service of the Treasury Department by Reorganization Plan No. III, sec. 1(a), effective June 30, 1940 (54 Stat. 1231).

such subsection.

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to com-

ply substantially with such provision, the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) but shall instead be made,

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subject to the other provisions of this title, under paragraph (4) of

Sec. 1404. In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds-

(1) that the plan has been so changed as to impose any residence or citizenship requirements prohibited by section 1402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in

a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1402

(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) 12 until he is satisfied that such prohibited requirement is no longer so imposed and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure). 13

Definition

Sec. 1405. For the purposes of this title, the term "aid to the permanently and totally disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of, needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases.

See sec. 1116, title XI, p. 243, this volume.
 P.L. 90-248, sec. 245(1), inserted the parenthetical clause.
 P.L. 90-248, sec. 245(2), substituted this sentence in lieu of "Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State".

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1402 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide

such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible,

his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual

with respect to whom it is made.

TITLE XV—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES AND THE EX-SERVICEMEN'S UNEMPLOYMENT COMPENSATION PROGRAM

[P.L. 89-554, 80 Stat. 378, approved September 6, 1966, repealed title XV of the Social Security Act (68 Stat. 1130; 72 Stat. 1087), and codified the provisions thereof as chapter 85 of title 5 of the United States Code. For Chapter 85—Unemployment Compensation, see p. 914, vol. II.]

TITLE XVI—GRANTS TO STATES FOR AID TO THE AGED, BLIND, OR DISABLED, OR FOR SUCH AID AND MEDI-CAL ASSISTANCE FOR THE AGED 1

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Appropriation

Section 1601. For the purpose (a) of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled, (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of individuals who are 65 years of age or over and who are not recipients of aid to the aged, blind, or disabled but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-support or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged.

² This table of contents does not appear in the law.

¹Title XVI is administered by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. Title XVI of the Social Security Act appears in the United States Code as secs. 1381–1385 of title 42.

P.L. 87–543, sec. 141(b), provides that no payment may be made to a State under title I, X, or XIV of the Social Security Act for any period for which such State receives any payments under this title XVI or for any period thereafter.

See footnote 1 of title I for provisions of the Economic Opportunity Act and the Food Stamp Act affecting a State plan approved under this title XVI.

See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting federally assisted programs.

assisted programs.

assisted programs.

See also sec. 121 (b) of P.L. 89-97, on p. 510, vol. II, for restriction on payments to States receiving payment under title XIX.

P.L. 90-248, sec. 234 (c), provides:

"Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements."

2 This table of contents does not appear in the law.

State Plans for Aid to the Aged, Blind, or Disabled, or for Such Aid and Medical Assistance for the Aged

Sec. 1602. (a) A State plan for aid to the aged, blind, or disabled, or for aid to the aged, blind, or disabled and medical assistance for the aged, must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon

them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with rea-

sonable promptness;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; ³

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the cor-

rectness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes di-

rectly connected with the administration of the plan; 4

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reason-

able promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

³P.L. 90-248, sec. 210(a)(5)(B), added subclause (B); effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with this amendment is approved.

⁴ See footnote 7, title I.

(10) provide a description of the services (if any) which the State agency makes available to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under title I or aid under the State plan approved under part A

of title IV or under title X or XIV; 5

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of

aid or assistance under the plan;

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with

respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first \$85 per month of earned income plus one-half of earned income in excess of \$85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary

for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first \$80 per month of earned income, the State agency may disregard not more than the first \$20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first \$80 per month of earned income the State agency may disregard not more than the first \$20 thereof plus one-half of the

remainder, and 6

⁵ P.L. 90-248, sec. 241(d), deleted "title IV, X, or XIV" and inserted "part A of title IV or under title X or XIV".

⁶ See also sec. 1109 of title XI, p. 239, this volume.

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than \$7.50 ° of any income;

(15) if the State plan includes medical assistance for the aged—
(A) provide for inclusion of some institutional and some

noninstitutional care and services;

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State

but are absent therefrom; and

(D) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(16) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in insti-

tutions for mental diseases

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodic determination of his need for continued treatment in the

institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 1603(a)(4)(A) (i) and (ii) which are

⁷ P.L. 90-248, sec. 213(a) (4), deleted "\$5" and inserted "\$7.50".

appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilties of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost

of institutional care for such patients; and

(17) if the State plan includes aid or assistance to or in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X was different from the State agency which administered or supervised the administration of the plan of such State approved under title I and the State agency which administered or supervised the administration of the plan of such State approved under title XIV, the State agency which administered or supervised the administration of such plan approved under title X may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid or assistance

under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for aid to the aged, blind, or disabled excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of

the United States. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950 were applicable on January 1, 1962, and to which the sentence of section 1002(b) following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) was submitted for approval under this title, the Secretary shall approve the plan of such State for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged) for purposes of this title, even though it does not meet the requirements of paragraph (14) of subsection (a) if it meets all other requirements of this title for an approved plan for aid to the aged, blind, or disabled (or for aid to the aged, blind, or disabled and medical assistance for the aged); but payments under section 1603 shall be made, in the case any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1603 under a plan approved under this section without regard to the provisions of this sentence.

(c) Subject to the last sentence of subsection (a), nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

Payments to States

Sec. 1603. (a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1962—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or

any other type of remedial care or the cost thereof) -

(A) \$\frac{3}{3}_{37}\$ of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of \$37 multiplied by the total number of recipients of such aid for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received such aid in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i) (I) the Federal percentage (as defined in section 1101(a)(8)) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month, plus (II) 15 per centum of the total expended during such month as aid to the aged, blind, or disabled under the State plan in the form of

medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of \$15 multiplied by the total number of recipients of aid to the aged, blind, or disabled

for such month, or

(ii) (I) the Federal medical percentage (as defined in section 6(c)) of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of \$52 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (b) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of \$37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as aid to the aged, blind, or disabled under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month as exceeds the product of \$38 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam,

an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan (including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds \$37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled

for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of \$45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month, or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of \$37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product

of \$7.50 multiplied by the total number of such recipients

of aid to the aged, blind, or disabled for such month;

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 61(c)) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

(4) in the case of any State whose State plan approved under section 1602 meets the requirements of subsection (c)(1), an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and

efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as

are for-

(i) services which are prescribed pursuant to subsection (c) (1) and are provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such

applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1), and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid or assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivi-

sion; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid or assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid or assistance; plus

(C) one-half of the remainder of such expenditures. The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under

⁶P.L. 90-248, sec. 212(d), inserted ", except to the extent specified by the Secretary,"; effective January 1, 1968.

this title shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provid-

ed by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and proce-

dures as many be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 1602 does not meet the requirements of subsection (c) (1), an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance

with the provisions of such paragraph.9

(b) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased

⁹ See sections 1108, 1118, 1119, and 1121, title XI, pp. 238, 239, and 246, this volume.

to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been

made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.¹⁰

(c) (1) In order for a State to qualify for payments under paragraph (4) of subsection (a), its State plan approved under section 1602 must provide that the State agency shall make available to applicants for or recipients of aid to the aged, blind, or disabled under such State plan at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency, administering or supervising the administra-

tion of such plan, that-

(A) the provision has been so changed that it no longer com-

plies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to com-

ply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) but shall instead be made, subject to the other provisions of this title, under paragraph (5) of such subsection.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health

¹⁰ P.L. 87-543, sec. 141(f), provides that "In the case of any State which has a State plan approved under title XVI of the Social Security Act, any overpayment or underpayment which the Secretary determines was made to such State under section 3, 1003, or 1403 of such Act with respect to a period before the approval of the plan under such title XVI, and with respect to which adjustment has not been already made under subsection (b) of such section 3, 1003, or 1403, shall, for purposes of section 1603(b) of such Act, be considered an overpayment or underpayment (as the case may be) made under section 1603 of such Act".

problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

Operation of State Plans 11

Sec. 1604. If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies

with the provisions of section 1602; or

(2) that in the administration of the plan there is a failure

to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

Definitions

Sec. 1605. (a) For purposes of this title, the term "aid to the aged, blind, or disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in

a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an

institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or

¹¹ See sec. 1116, title XI, p. 243, this volume.

concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1602

includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide

such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible,

his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justify such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual

with respect to whom it is made.

- (b) For purposes of this title, the term "medical assistance for the aged" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals who are sixty-five years of age or older and who are not recipients of aid to the aged, blind, or disabled (except, for any month, for recipients of aid to the aged, blind, or disabled who are admitted to or discharged from a medical institution during such month) but whose income and resources are insufficient to meet all of such cost—
 - (1) inpatient hospital services; (2) skilled nursing-home services;

(3) physicians' services;

(4) outpatient hospital or clinic services;

(5) home health care services; (6) private duty nursing services;

(7) physical therapy and related services;

(8) dental services;(9) laboratory and X-ray services;

(10) prescribed drugs, eyeglasses, dentures, and prosthetic devices;

(11) diagnostic, screening, and preventive services; and

(12) any other medical care or remedial care recognized under State law;

except that such term does not include any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution).

TITLE XVII—GRANTS FOR PLANNING COMPREHEN-SIVE ACTION TO COMBAT MENTAL RETARDATION 1

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Authorization of Appropriations

Sec. 1701. For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of \$2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, \$2,750,000 for the fiscal year ending June 30, 1966, and \$2,750,000 for the fiscal year ending June 30, 1967.

Grants to States

Sec. 1702. The sums appropriated pursuant to the first sentence of section 1701 shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.

See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting Federally assisted programs.

2 This table of contents does not appear in the law.

¹ Sec. 5 of P.L. 88-156, approved October 24, 1963, added title XVII to the Social Security Act. Title XVII is administered by the Public Health Service, Department of Health, Education, and Welfare.

Applications

Sec. 1703. In order to be eligible for a grant under section 1702, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying

out the purposes of this title;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes

of this title;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposese of this title, and for submission of such other reports, in such form and containing such information, as the Secretary may from time to time find necessary for carrying out the purposes of this title and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and

accounting for funds paid to the State under this title.

Payments

Sec. 1704. Payment of grants under this title may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

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Prohibition Against Any Federal Interference

Sec. 1801. Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

Free Choice by Patient Guaranteed

Sec. 1802. Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide him such services.

Option to Individuals To Obtain Other Health Insurance Protection

Sec. 1803. Nothing contained in this title shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

Part A—Hospital Insurance Benefits for the Aged

Description of Program

Sec. 1811. The insurance program for which entitlement is established by section 226 provides basic protection against the cost of hospital and related post-hospital services in accordance with this part for individuals who are age 65 or over and are entitled to retirement benefits under title II of this Act or under the railroad retirement system.

Scope of Benefits

Sec. 1812. (a) The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him 1 (subject to the provisions of this part) for-

(1) inpatient hospital services for up to 150 days during any spell of illness minus one day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made)2;

(2) post-hospital extended care services for up to 100 days

during any spell of illness; and

(3) post-hospital home health services for up to 100 visits (during the one-year period described in section 1861(n)) after

¹P.L. 90-248, sec. 143(b), inserted "or, in the case of payments referred to in section 1814(d) (2) to him". Applicable to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968.
²P.L. 90-248, sec. 137(a) (1), inserted "up to 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);" in lieu of "up to 90 days during any spell of illness". Applicable with respect to services furnished after December 31, 1967.

the beginning of one spell of illness and before the beginning of the next.3

(b) Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c)) be made

for-

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him 4 for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for

100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190

days during his lifetime.

(c) If an individual is an inpatient of a psychiatric hospital 5 on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b) (1) insofar as such limit applies to (1) inpatient psychiatric hospital services,6 or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness? (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b) (3)).8

(d) Payment under this part may be made for post-hospital home health services furnished an individual only during the one-year pe-

1967.

7 P.L. 90-248, sec. 146(a) (3), further amended section 1812(c) as amended by section 138(a) of P.L. 90-248 (see footnote 4, this title) by deleting "or tuberculosis". Applicable as indicated in footnote 1, this title.

8 P.L. 90-248, sec. 138(a), inserted "in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b) (1) insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b) (3))" in lieu of "in the 90-day period immediately before such first day shall be included in determining the 90-day limit under subsection (b) (1) (but not in determining the 190-day limit under subsection (b) (3))". Applicable with respect to payment for services furnished after December 31, 1967.

³ P.L. 90-248, sec. 129(c)(2)(C), deleted section 1812(a)(4) which read as follows: "outpatient hospital diagnostic services". Applicable with respect to services furnished

[&]quot;outpatient hospital diagnostic services". Applicable with respect to services furnished after March 31, 1968.

*P.L. 90-248, sec. 187(a) (2), inserted "for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);" in lieu of "for 90 days during such spell". Applicable with respect to services furnished after December 31, 1967.

*P.L. 90-248, sec. 146(a) (1), deleted "or a tuberculosis hospital". Applicable with respect to services furnished after December 31, 1967.

*P.L. 90-248, sec. 146(a) (2), further amended section 1812(c) as amended by section 138(a) of P.L. 90-248 (see footnote 4, this title) by deleting "and inpatient tuberculosis hospital services". Applicable with respect to services furnished after December 31, 1967.

riod described in section 1861(n) following his most recent hospital discharge which meets the requirements of such section, and only for the first 100 visits in such period. The number of visits to be charged for purposes of the limitation in the preceding sentence, in connection with items or services described in section 1861(m), shall be determined

in accordance with regulations.9

(e) For purposes of subsections (b), (c), and (d), inpatient hospital services, inpatient psychiatric hospital services, post-hospital extended care services, and post-hospital home health services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.

(f) For definition of "spell of illness", and for definitions of other

terms used in this part, see section 1861.

Deductibles and Coinsurance

Sec. 1813. (a) (1) The amount payable for inpatient hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have

been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1812(a) (1) to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary

charges shall be considered to be the charges so imposed). 10

(2) The amount payable to any provider of services under this part for services furnished an individual during any spell of illness shall

⁹ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

¹⁰ P.L. 90-248, sec. 137(b), amended this sentence. Prior to such amendment, this sentence read: "Such amount shall be further reduced by a coinsurance amount equal to one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell." Applicable with respect to services furnished after December 31, 1967.

be further reduced by a deduction equal to the cost of the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such

services during such spell of illness.11

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(b) (1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) shall be \$40 in the case of any spell

of illness 12 beginning before 1969.

(2) The Secretary shall, between July 1 and October 1 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) in the case of any spell of illness 13 beginning during the succeeding calendar year. Such inpatient hospital deductible shall be equal to \$40 multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of \$4 shall be rounded to the nearest multiple of \$4 (or, if it is midway between two multiples of \$4, to the next higher multiple of \$4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1866, to individuals who are entitled to hospital insurance benefits under section 226, plus the amount which would have been so paid but for subsection (a) (1) of this section.

services are furnished him." Applicable with respect to services furnished after March 31, 1968.

P.L. 90-248, sec. 135(a)(1), amended section 1813(a)(2) (as redesignated) in its entirety. Applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967. The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations. Section 1813(a)(2) (formerly section 1813(a)(3)) read: "The amount payable to any provider of services under this part for services furnished an individual during any spell of illness shall be further reduced by an amount equal to the cost of the first three pints of whole blood furnished to him as part of such services during such spell of illness."

2º P.L. 90-248, sec. 129((c)(4)(A), deleted the phrase "or diagnostic study". Applicable with respect to services furnished after March 31, 1968.

2º P.L. 90-248, sec. 129(c)(4)(B), deleted "or diagnostic study". Applicable with respect to services furnished after March 31, 1968.

[&]quot;P.L. 90-248, sec. 129(c)(3), deleted section 1813(a)(2) and redesignated former sections 1813(a)(3) and (4) as sections 1813(a)(2) and (3). Former section 1813(a)(2) read: "The amount payable for outpatient hospital diagnostic services furnished an individual during a diagnostic study shall be reduced by a deduction equal to the sum of (A) one-half of the inpatient hospital deductible which is applicable to spells of illness beginning in the same calendar year as such diagnostic study and (B) 20 per centum of the remainder of such amount. For purposes of the preceding sentence, a diagnostic study for any individual consists of the outpatient hospital diagnostic services provided by (or under arrangements made by) the same hospital during the 20-day period beginning on the first day (not included in a previous diagnostic study) on which he is entitled to hospital insurance benefits under section 226 and on which outpatient hospital diagnostic services are furnished him." Applicable with respect to services furnished after March 31, 1968.

Conditions of and Limitations on Payment for Services

Requirement of Requests and Certifications

Sec. 1814. (a) Except as provided in subsection (d), payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866 and only if—

(1) written request, signed by such individual except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary

may by regulation prescribe; 14

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) ¹⁵ in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or

(ii) render the condition non-communicable:

(C) in the case of post-hospital extended care services, such services are or were required to be given on an inpatient basis because the individual needs or needed skilled nursing care on a continuing basis for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (8) of section 1861(e)) prior to transfer to the extended care facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services; or

¹² The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

requeral Regulations.

15 P.L. 90-248, sec. 126(a) (1), deleted subparagraph (A) and redesignated former subparagraphs (B), (C), (D), and (E) as (A), (B), (C), and (D) respectively. Applicable with respect to services furnished after January 2, 1968. Prior to such amendment, this subparagraph (A) read: "(A) in the case of inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services), such services are or were required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is or was medically required and such services are or were necessary for such purpose;".

(D) in the case of post-hospital home health services, such services are or were required because of the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (8) of section 1861(e)) or post-hospital extended care services; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician;

(F)16

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause (A) shall be furnished no later than the 20th day of such period;17

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent

services; (5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve

his condition or (B) render it noncommunicable;

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, 19 there was not in effect, at the time of admission of such individual to the hospital or extended care facility, as the case may be, a decision un-

¹⁶ P.L. 90-248, sec. 129(c) (5) (A) (iii), deleted subparagraph (F) in its entirety. Applicable with respect to services furnished after January 2, 1968.

Prior to such amendment, this subparagraph (F) read:

"(F) in the case of outpatient hospital diagnostic services, such services are or were required for diagnostic study;".

¹⁶ P.L. 90-248, sec. 126(a) (4), inserted new subparagraph (3). Applicable with respect to services furnished after January 2, 1968.

¹⁶ P.L. 90-248, sec. 126(a) (3), redesignated paragraphs (3), (4), (5), and (6) as (4), (5), (6), and (7) respectively. Applicable to services furnished after January 2, 1968.

¹⁶ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations. Federal Regulations.

der section 1866(d) (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility);

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1861(k)(4)) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or extended care facility, as the case may be, received notice of such finding.

To the extent provided by regulations, 20 the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C) or (D)²¹ of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by

such regulations.

Reasonable Cost of Services

(b) The amount paid to any provider of services with respect to services for which payment may be made under this part shall, subject to the provisions of section 1813, be the reasonable cost of such services, as determined under section 1861(v).

No Payments to Federal Providers of Services

(c) No payment may be made under this part (except under subsection (d)) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

Payments for Emergency Hospital Services

(d) (1) Payments shall also be made to any hospital for inpatient hospital services 22 furnished in a calendar year 23 by the hospital or under arrangements (as defined in section 1861(w)) with it, to an individual entitled to hospital insurance benefits under section 226 even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an

²⁰ See footnote 19, this title.
²¹ P.L. 90-248, sec. 126(a)(5), inserted "or (D)" in lieu of "(D), or (E)". P.L. 90-248, sec. 129(c)(5)(B), inserted "or (E)" in lieu of "(E), or (F)". Applicable with respect to services furnished after January 2, 1968.
²² P.L. 90-248, sec. 129(c)(6)(A), deleted "or outpatient hospital diagnostic services". Applicable with respect to services furnished after March 31, 1968, sec. 143(c)(2), inserted "in a calendar year". Applicable to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968.

agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1835(b) furnished during such year.24 Such payments shall be made only in the amounts provided under subsection (b) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section

1866(a). (2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 226 for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for

reimbursement.25

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1813, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1861(v)(4)), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term "routine services" shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term "ancillary services" shall mean those special services for which charges are customarily made in addition to routine services.26

Payment for Inpatient Hospital Services Prior to Notification of Noneligibility

(e) Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1812 and if such hospital complies with the requirements of and regulations under this title with respect

²⁴ P.L. 90-248, sec. 148(c)(4), added subparagraph (C). Applicable as provided in footnote 23, this title.

**P.L. 90-248, sec. 148(c)(5), added subparagraphs (2) and (3) to section 1814(d). Applicable to services furnished with respect to admissions occurring after December 31, 1967, and to outpatient hospital diagnostic services furnished after December 31, 1967, and before April 1, 1968.

**See footnote 25, this title.

to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for the services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or legal holiday) after the day on which such admission occurred.

Payment for Certain Emergency Hospital Services Furnished Outside the United States

(f) The authority contained in subsection (d) shall be applicable to emergency inpatient hospital services furnished an individual by a hospital located outside the United States if—

(1) such individual was physically present in a place within the United States at the time the emergency which necessitated such

inpatient hospital services occurred; and

(2) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

Payment to Providers of Services

Sec. 1815. The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

Use of Public Agencies or Private Organizations To Facilitate Payment to Providers of Services

Sec. 1816. (a) If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers, and for the making of such payments by such agency or organization to such providers. Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide con-

sultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other

functions as are necessary to carry out this subsection.

(b) The Secretary shall not enter into an agreement with any agency or organization under this section unless (1) he finds (A) that to do so is consistent with the effective and efficient administration of this part, and (B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 226, and the agreement provides for such assistance, and (2) such agency or organization agrees to furnish to the Secretary such of the information acquired by it in carrying out its agreement under this section as the Secretary may find necessary in performing his functions under this part.

(c) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a), and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions

covered by the agreement.

(d) If the nomination of an agency or organization as provided in this section is made by a group or association of providers of services, it shall not be binding on members of the group or association which notify the Secretary of their election to that effect. Any provider may, upon such notice as may be specified in the agreement under this section with an agency or organization, withdraw its nomination to receive payments through such agency or organization. Any provider which has withdrawn its nomination, and any provider which has not made a nomination, may elect to receive payments from any agency or organization which has entered into an agreement with the Secretary under this section if the Secretary and such agency or organization agree to it.

(e) An agreement with the Secretary under this section may be

terminated-

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations,²⁷ or

 $^{^{27}\,\}mathrm{The}$ regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations,28 but only if he finds, after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(f) An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in carrying out the agreement, to give surety bond to the United

States in such amount as the Secretary may deem appropriate.

(g) (1) No individual designated pursuant to an agreement under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to

any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) and (2).

Federal Hospital Insurance Trust Fund

Sec. 1817. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated,

amounts equivalent to 100 per centum of-

(1) the taxes imposed by section 3101(b) and 3111(b) of the Internal Revenue Code of 1954 29 with respect to wages reported to the Secretary of the Treasury or his delegate prusuant to subtitle F of such Code after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954 30 with respect to self-employment income re-

 ²⁸ See footnote 27, this title.
 29 See pp. 400 and 402.
 30 See p. 389.

ported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code, as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of self-employment established and maintained by the Secretary of Health, Education, and Welfare in acordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred from time to time from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, paid to or deposited into the Treasury; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes

specified in such sentence.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April ³¹ of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small;

and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in

which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed

a P.L. 90-248, sec. 169(a), inserted "April" in lieu of "March".

as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obli-

gations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and

form a part of the Trust Fund.

(f) (1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954 32 with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, 33 and the Secretary of Health, Education, and Welfare shall furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-

See pp. 400 and 459.
 See p. 449 and following.

Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(h) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative

expenses in accordance with section 201(g)(1).

Part B—Supplementary Medical Insurance Benefits for the Aged

Establishment of Supplementary Medical Insurance Program for the Aged

Sec. 1831. There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for individuals 65 years of age or over who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

Scope of Benefits

Sec. 1832. (a) The benefits provided to an individual by the insur-

ance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in paragraph (2) (B); and (2) entitlement to have payment made on his behalf (subject to

the provisions of this part) for-

(A) home health services for up to 100 visits during a

calendar year;

(B) medical and other health services (other than physicians' services unless furnished by a resident or intern of a hospital and the services for which payment may be made pursuant to section 1835(b)(2))³⁴ furnished by a provider of services or by others under arrangements with them made by a provider of services; and

(C) outpatient physical therapy services.³⁵
(b) For definitions of "spell of illness", "medical and other health services", and other terms used in this part, see section 1861.

⁸² P.L. 90-248, sec. 129(c)(6)(B), inserted "hospital and the services for which payment may be made pursuant to section 1835(b)(2)" in lieu of "hospital". Applicable with respect to services furnished after March 31, 1968.

⁸⁵ P.L. 90-248, sec. 133(d)(3), added subparagraph (C) to section 1832(a)(2). Applicable to services furnished after June 30, 1968.

Payment of Benefits 36

Sec. 1833. (a) Subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part,

amounts equal to—

(1) in the case of services described in section 1832(a) (1)— 80 percent of the reasonable charges for the services; 37 except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b), and (B) with respect to expenses incurred for radiological or pathological services for which payment may be made under this part, furnished to an inpatient of a hospital by a physician in the field of radiology or pathology, the amounts paid shall be equal to 100 percent of the reasonable charges for such services; 38 and

(2) in the case of services described in section 1832(a) (2)—80 percent of the reasonable cost of the services (as determined under

section 1861(v)).

(b) Before applying subsection (a) with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which benefits payable under subsection (a) are determinable) shall be reduced by a deductible of \$50; except that (1) of the amount of the deductible for such calendar year as so determined shall first be reduced by the amount of any expenses incurred by such individual in the last three months of the preceding calendar year 39 and applied toward such individual's deductible under this section for such preceding year, and (2) such total amount shall not include expenses incurred for radiological or pathological services furnished to such individual as an inpatient of a hospital by a physician in the field of radiology or pathology. The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole

²⁶ See also sec. 104(b)(1) of P.L. 89-97 on p. 508, vol. II, for restriction of payment under certain circumstances.

*** P.L. 90-248, sec. 131(a)(1), inserted "except that (A)" in lieu of "except that". Applicable with respect to services furnished after March 31, 1968.

*** P.L. 90-248, sec. 131(a)(2), inserted "of subsection (b), and (B) with respect to expenses incurred for radiological or pathological services for which payment may be made under this part, furnished to an inpatient of a hospital by a physician in the field of radiology or pathology, but amounts paid shall be equal to 100 percent of the reasonable charges for such services)" in lieu of "of subsection (b)". Applicable with respect to services furnished after March 31, 1968.

*** P.L. 90-248, sec. 129(c)(7)(A), deleted parenthetical phrase "(or regarded under clause (2) as incurred in such preceding year with respect to services furnished in such last three months)". Applicable with respect to services furnished after March 31, 1968.

blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.40

(c) Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) only whichever of the following

amounts is the smaller:

(1) \$312.50, or

(2) 62½ percent of such expenses.

(d) No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1813) 41 to have payment made with respect to such services under part A.

(e) No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to

which the amounts are being paid or for any prior period.

(f) In the case of the purchase of durable medical equipment included under section 1861 (s) (6), by or on behalf of an individual, payment shall be made in such amounts as the Secretary determines to be equivalent to payments that would have been made under this part had such equipment been rented and over such period of time as the Secretary finds such equipment would be used for such individual's medical treatment, except that with respect to purchases of inexpensive equipment (as determined by the Secretary) payment may be made in a lump sum if the Secretary finds that such method of payment is less costly or more practical than periodic payments. 42

lations of the Secretary are contained in chapter 111 of title 20 of the code of resonance Regulations.

4 P.L. 90-248, sec. 129(c)(8), deleted "other than subsection (a)(2)(A) thereof" in the parenthetical phrase of section 1833(c). Applicable with respect to services furnished after March 31, 1968.

42 P.L. 90-248, sec. 132(b), added subsection (f) to section 1833. Applicable only with respect to items purchased after December 31, 1967.

⁴⁰ P.L. 90-248, sec. 129(c)(7)(B), deleted former section 1833(b)(2) effective with respect to services furnished after March 31, 1968. P.L. 90-248, sec. 131(b), inserted new section 1833(b)(2) consisting of the first sentence only applicable with respect to services furnished after March 31, 1968. P.L. 90-248, sec. 135(c) added the last sentence of section 1833(b)(2), applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967. Prior to these amendments, section 1833(b)(2) read: "and (2) the amount of any deduction imposed under section 1813(a) (2)(A) with respect to outpatient hospital diagnostic services furnished in any calendar year shall be regarded as an incurred expense under this part for such year." The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

Limitation on Home Health Services

Sec. 1834. (a) Payment under this part may be made for home health services furnished an individual during any calendar year only for 100 visits during such year. The number of visits to be charged for purposes of the limitation in the preceding sentence, in connection with items and services described in section 1861(m), shall be determined in accordance with regulations.43

(b) For purposes of subsection (a), home health services shall be taken into account only if payment under this part is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1835(a), made with

respect to such services.

Procedure for Payment of Claims of Providers of Services

Sec. 1835. (a) Except as provided in subsections (b) and (c), payment 44 for services described in section 1832(a) (2) furnished an individual may be made only to providers of services which are eligible therefor under section 1866(a), and only if—

(1) written request, signed by such individual except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, within such time, and by such person or persons as the Secretary

may by regulations prescribe; 45 and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) 46 that-

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needed skilled nursing care on an intermittent basis, or physical or speech therapy, (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services except services described in subparagraphs (B), (C), and (D) of section 1861(s)(2),47 such services are or were medically re-

quired; and

The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

**P.L. 90-248, sec. 129(c)(9)(A) inserted "Except as provided in subsection (b), payment" in lieu of "Payment"; and sec. 130(a) of P.L. 90-248, further amended sec. 1835(a), by inserting "Except as provided in subsections (b) and (c)," in lieu of "Except as provided in subsections (b)". Applicable with respect to services furnished after March 31, 1968.

<sup>1968.

45</sup> See footnote 43, this title.

46 See footnote 43, this title.

47 P.L. 90-248, sec. 126(b), inserted "except services described in subparagraphs (B) and (C) of section 1861(s) (2)" applicable with respect to services furnished after January 2, 1968; section 133(e) (4) further amended sec. 1835(a) (2) (B) by inserting "(B), (C), and (D) of section 1861(s) (2)" in lieu of "(B) and (C) of section 1861(s) (2)." Applicable to services furnished after June 30, 1968.

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services on an outpatient basis, (ii) a plan for furnishing such services has been established, and is periodically reviewed, by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.48 For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).49

To the extent provided by regulations,50 the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such

regulations.

(b) (1) Payment may also be made to any hospital for services described in section 1861(s) furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1814(d) (1) (C) with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1833(a)(2) and then only if such hospital agrees to comply, with respect to the emergency services provided. with the provisions of section 1866 (a).

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1814(d)(1)(C), to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) 51 for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1833, be equal to 80 percent of the hospital's reasonable

charges for such services.52

⁴⁸ P.L. 90-248, sec. 133(e)(3), added subparagraph (C). Applicable to services furnished after June 30, 1968.

48 P.L. 90-248, sec. 133(e)(5), added this sentence. Applicable to services furnished after June 30, 1968.

50 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

51 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations,

52 P.L. 90-248, sec. 123(e)(9)(B), added subparagraphs (b)(1) and (b)(2) to section 1835. Applicable with respect to services furnished after March 31, 1968.

(c) Notwithstanding the provisions of this section and sections 1832, 1833, and 1866(a) (1) (A), a hospital may, subject to such limitations as may be prescribed by regulations,53 collect from an individual the customary charges for services specified in section 1861(s) and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed \$50, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1833 (a) (1). Payments under this title to hospitals which have elected to make collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1833(a)(2).54

(d) 55 No payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a con-

tract with, the United States to render at public expense.

Eligible Individuals

Sec. 1836. Every individual who—

(1) has attained the age of 65, and

(2) (A) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part, or (B) is entitled to hospital insurance benefits under part A,

is eligible to enroll in the insurance program established by this part.

Enrollment Periods 56 57

Sec. 1837. (a) An individual may enroll in the insurance program established by this part only in such manner and form as may be prescribed by regulations, 58 and only during an enrollment period prescribed in or under this section.

(b) (1) No individual may enroll for the first time under this part unless he does so in a general enrollment period (as provided in subsection (e)) which begins within 3 years after the close of the first enrollment period during which he could have enrolled under this part.59

See footnote 51, this title.
 P.L. 90-248, sec. 180(b), added subsection (c) to section 1835. Applicable with respect to services furnished after March 31, 1968.
 P.L. 90-248, sec. 129(c) (9) (B) redesignated subsection (b) as subsection (c) and section 130(b) of P.L. 90-248, redesignated subsection (c) (as redesignated) as subsection (d). Applicable with respect to services furnished after March 31, 1968.
 See also sec. 102(b) of P.L. 89-97 on p. 507, vol. II.
 See also sec. 104(b) (2) of P.L. 89-97 on p. 509, vol. II, for restriction on enrollment in certain circumstances.

of See also sec. 104(b)(2) of P.L. 89-97 on p. 509, vol. 11, for restriction on enrolment in certain circumstances.

The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

P.L. 90-248, sec. 145(a), amended 1837(b)(1) in its entirety. Prior to such amendment, this paragraph read: "No individual may enroll for the first time under this part more than 3 years after the close of the first enrollment period during which he could have enrolled under this part." Effective April 1, 1968.

(2) An individual whose enrollment under this part has terminated may not enroll for the second time under this part unless he does so in a general enrollment period (as provided in subsection (e)) which begins within 3 years after the effective date of such termination. No in-

dividual may enroll under this part more than twice.60

(c) In the case of individuals who first satisfy paragraphs (1) and (2) of section 1836 before March 1, 1966,61 the initial general enrollment period shall begin on the first day of the second month which begins after the date of enactment of this title and shall end on May 31, 1966.62 For purposes of this subsection and subsection (d), an individual who satisfies paragraph (2) of section 1836 solely by reason of sub-paragraph (B) thereof shall be treated as satisfying such paragraph (2) on the first day on which he is (or on filing application would be)

entitled to hospital insurance benefits under part A.

(d) In the case of an individual who first satisfies paragraphs (1) and (2) of section 1836 on or after March 1, 1966,63 his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1838 as though he had attained such age at that time).64

(e) There shall be a general enrollment period, after the period described in subsection (c), during the period beginning on January 1

and ending on March 31 of each year beginning with 1969.65

Coverage Period 66

Sec. 1838. (a) The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his "coverage period") shall begin on whichever of the following is the latest:

(1) July 1, 1966; or

(2) (A) in the case of an individual who enrolls pursuant to subsection (d) of section 1837 before the month in which he first satisfies paragraphs (1) and (2) of section 1836, the first day of such month, or

⁶⁰ See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516, vol. II.

al P.L. 89-384, sec. 3(a), enacted April 8, 1966, inserted "March 1, 1966" in lieu of "January 1, 1966".

al P.L. 89-384, sec. 3(a), inserted "May 31, 1966" in lieu of "March 31, 1966" in sub-

section (c).

SP.L. 89-384, sec. 3(a), inserted "March 1, 1966" in lieu of "January 1, 1966".

P.L. 89-384, sec. 136(a), added at the end a new sentence to subsection (d). Applicable to individuals enrolling under Part B of title XVIII in months beginning after January 2, 1968.

P.L. 90-248, sec. 145(b), amended 1837(e) in its entirety, effective April 1, 1968. Subsection (e) formerly read: "There shall be a general enrollment period, after the period described in subsection (c), during the period beginning on October 1 and ending on December 31 of each odd-numbered year beginning with 1967." See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516, vol. II.

See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516. vol. II.

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraphs, the first day of the month following the month in which he so enrolls, or

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraphs, the first day of the second month

following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraphs, the first day of the third month following the month in which he so enrolls, or 67

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1837, the July 1 following the month in

which he so enrolls.68

(b) An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice 69 that the individual no longer wishes to participate in the insurance program established by this

part, 70 or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall take effect at the close of the calendar quarter following the calendar quarter 71 in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period (not in excess of 90 days) in which overdue premiums may be paid and coverage continued.

(c) No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage

period.

Amounts of Premiums

Sec. 1839. (a) The monthly premium of each individual enrolled under this part for each month before 1968 shall be \$3.72

(b) (1) The monthly premium of each individual enrolled under this part for each month after 1967 shall be the amount determined

under paragraph (2).73

(2) The Secretary shall, during December 1968 and of each year thereafter, determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior

⁶⁷ P.L. 89-384, sec. 3 (d), enacted April 8, 1966, provides:
"In the case of an individual who first satisfies paragraphs (1) and (2) of section 1836 of the Social Security Act in March 1966, and who enrolls pursuant to subsection (d) of section 1837 of such Act in May 1966, his coverage period shall, notwithstanding section 1838(a)(2)(D) of such Act begin on July 1, 1966." See also Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516, vol. II.

See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516, vol. II.

os See Medical Enrollment Act of 1997, 1.2. co., during a general enrollment period described in section 1837(c)." in section 1838(b) (1). Effective April 1, 1968.

os See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516, vol II vol. II.

78 See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516,

month) which shall be applicable for premiums for months occurring in the 12-month period commencing July 1 in each succeeding year. Such dollar amount shall be such amount as the Secretary estimates to be necessary so that the aggregate premiums for such 12-month period will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for such 12-month period. In estimating aggregate benefits payable for any period, the Secretary shall include an appropriate amount for a contingency margin. Whenever the Secretary, pursuant to the preceding sentence, promulgates the dollar amount which shall be applicable for premiums for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of premiums so promulgated.74

(c) In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1837), the monthly premium determined under subsection (b) shall be increased by 10 percent of the monthly premium so determined for each full 12 months in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he

enrolled for the second time.75

(d) If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

Payment of Premiums

Sec. 1840. (a) (1) In the case of an individual who is entitled to monthly benefits under section 202, his monthly premiums under this part shall (except as provided in subsection (d)) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Secretary shall by regulation prescribe. 76

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the

vol. II. To The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

[&]quot;P.L. 90-248, sec. 145(d), revised paragraph (2) in its entirety. Formerly it read:

"(2) The Secretary shall, between July 1 and October 1 of 1967 and of each oddnumbered year thereafter, determine and promulgate the dollar amount which shall be
applicable for premiums for months occurring in either of the two succeeding calendar
years. Such dollar amount shall be such amount as the Secretary estimates to be necessary
so that the aggregate premiums for such two succeeding calendar years will equal onehalf of the total of the benefits and administrative costs which he estimates will be payable
from the Federal Supplementary Medical Insurance Trust Fund for such two succeeding
calendar years. In estimating aggregate benefits payable for any period, the Secretary shall
include an appropriate amount for a contingency margin."

Notwithstanding the provisions of section 2 of P.L. 90-97, the amendments made by
section 145(d) become effective December 1, 1968.

"See Medical Enrollment Act of 1967, P.L. 90-97, enacted September 30, 1967, p. 516,
vol. II.

Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 202 which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health, Education, and Welfare and shall be appropriately adjusted to the extent that prior transfers were too great or too

(b) (1) In the case of an individual who is entitled to receive for a month an annuity or pension under the Railroad Retirement Act of 1937, his monthly premiums under this part shall (except as provided in subsection (d)) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe.77 Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent

that prior transfers were too great or too small.

(c) In the case of an individual who is entitled both to monthly benefits under section 202 and to an annuity or pension under the Railroad Retirement Act of 1937 78 at the time he enrolls under this part, subsection (a) shall apply so long as he continues to be entitled both to such benefits and such annuity or pension. In the case of an individual who becomes entitled both to such benefits and such an annuity or pension after he enrolls under this part, subsection (a) shall apply if the first month for which he was entitled to such benefits was the same as or earlier than the first month for which he was entitled to such annuity or pension, and otherwise subsection (b) shall

(d) If an individual to whom subsection (a) or (b) applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly pre-

miums for such period as he desires.

(e) (1) In the case of an individual receiving an annunity under subchapter III of chapter 83 of title 5, United States Code, or any other law 79 administered by the Civil Service Commission providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health, Education, and Welfare to the Civil Service Commission, be collected by deducting the amount thereof from each installment of

⁷⁷ See footnote 76, this title.
78 See p. 865, vol. II.
78 P.L. 90-248, sec. 403(g) (1), inserted "subchapter III of chapter 83 of title 5, United States Code, or any other law" in lieu of "the Civil Service Retirement Act, or other Act".

such annuity. Such deduction shall be made in such manner and at such times as the Civil Service Commission may determine. The Civil Service Commission shall furnish such information as the Secretary of Health, Education, and Welfare may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of title 5, United States Code, may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.80

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law ⁸¹ administered by the Civil Service Commission, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfer shall be made on the basis of a certification by the Civil Service Commission and shall be appropriately adjusted to the extent that prior transfers were too great or too

small.

(f) In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (d) applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.82

(g) Amounts paid to the Secretary under subsection (d) or (f) shall be deposited in the Treasury to the credit of the Federal Supple-

mentary Medical Insurance Trust Fund.

(h) In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his cover-

age under such program terminates.

(i) In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1843 is applicable, subsections (a), (b), (c), (d), and (e) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1843 (d).83

Federal Supplementary Medical Insurance Trust Fund

Sec. 1841. (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Supplementary Medical Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

⁸⁰ P.L. 90-248, sec. 166, added this sentence.
81 P.L. 90-248, sec. 403(g)(2), inserted "law" in lieu of "Act".
82 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
83 P.L. 89-384, approved April 8, 1966, added subsection (i)

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Commissioner of Social Security shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April ⁸⁴ of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly

small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way

in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interestbearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act, as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average

⁸⁴ P.L. 90-248, sec. 169(a), inserted "April" in lieu of "March".

market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public

(d) Any obligations acquired by the Trust Fund (except public debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt

obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form

a part of the Trust Fund.

(f) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(g) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses

in accordance with section 201(g)(1).

(h) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Civil Service Commission in making deductions pursuant to section 1840(e). During each fiscal year, or after the close of such fiscal year, the Civil Service Commission shall certify to the Secretary the amount of the costs it incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

Use of Carriers for Administration of Benefits

Sec. 1842. (a) In order to provide for the administration of the benefits under this part with maximum efficiency and convenience for individuals entitled to benefits under this part and for providers of services and other persons furnishing services to such individuals, and with a view to furthering coordination of the administration of the benefits under part A and under this part, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, which will perform some or all of the following functions (or, to the extent provided in such contracts, will secure performance thereof by other organizations); and, with respect to any of the following functions which involve payments for physicians' services, the Secretary shall to the extent possible enter into such contracts:

(1) (A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

(B) receive, disburse, and account for funds in making such

payments; and

(C) make such audits of the records of providers of services as may be necessary to assure that proper payments are made under this part;

(2) (A) determine compliance with the requirements of section

1861(k) as to utilization review; and

(B) assist providers of services and other persons who furnish services for which payment may be made under this part in the development of procedures relating to utilization practices, make studies of the effectiveness of such procedures and methods for their improvement, assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits under this part, and provide procedures for and assist in arranging, where necessary, the establishent of groups outside hospitals (meeting the requirements of section 1861(k)(2)) to make reviews of utilization;

(3) serve as a channel of communication of information relat-

ing to the administration of this part; and

(4) otherwise assist, in such manner as the contract may provide, in discharging administrative duties necessary to carry out the purposes of this part.

(b) (1) Contracts with carriers under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes 85

or any other provision of law requiring competitive bidding.

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(3) Each such contract shall provide that the carrier—

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870 (f)) be made—

(i) on the basis of an itemized bill; or

^{85 41} U.S.C. 5.

(ii) on the basis of an assignment under the terms of which the reasonable charge is the full charge for the service; but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year); 86

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness of when the

amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions un-

der this part; and

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D)

and otherwise to carry out the purposes of this part;

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in

the locality for similar services.

(4) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations 87) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(c) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by

the contract.

(d) Any contract with a carrier under this section may require such carrier or any of its officers or employees certifying payments or dis-

⁸⁸ P.L. 90-248, sec. 125(a) (2), inserted new clauses (i) and (ii) in lieu of former clause (ii). Former clause (ii) read: "such payment will be made on the basis of a receipted bill, or on the basis of an assignment under the terms of which the reasonable charge is the full charge for the service". Applicable with respect to claims on which a final determination has not been made on or before January 2, 1968.

P.L. 90-248, sec. 154(d), inserted "(except as otherwise provided in section 1870(f))". The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

bursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in

such amount as the Secretary may deem appropriate.

(e) (1) No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such carrier shall be liable to the United States for any pay-

ment's referred to in paragraph (1) or (2).

(f) For purpose of this part, the term "carrier" means—

(1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other non-governmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(2) with respect to providers of services only, any agency or organization (not described in paragraph (1)) with which an

agreement is in effect under section 1816.

State Agreements for Coverage of Eligible Individuals Who Are Receiving Money Payments Under Public Assistance Programs (or Are Eligible for Medical Assistance) 88

Sec. 1843. (a) The Secretary shall, at the request of a State made before January 1, 1970,89 enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) (as specified in the agreement) will be enrolled under the program established by this part.

(b) An agreement entered into with any State pursuant to subsection

(a) may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under title I or title XVI; or

(2) individuals receiving money payments under all of the plans of such State approved under titles, I, X, XIV, and XVI, and part A of title IV. 90

Except as provided in subsection (g), there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under title II or who is entitled to receive an annuity or pension under the Railroad Retirement Act of 1937.91 92

^{**}SP.L. 90-248, sec. 222(b) (4), added "(or are eligible for medical assistance)".

**SP.L. 90-248, sec. 222(e) (1), inserted "1970" in lieu of "1968".

**OP.L. 90-248, sec. 241(e) (1), inserted ", and part A of title IV" in lieu of "IV".

**SP.L. 89-384, sec. 4(a), enacted April 18, 1966, amended section 1848(b) by deleting "except that there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under title II or who is entitled to receive an annuity or pension under the Railroad Retirement Act of 1937.", and by adding the last sentence to paragraph (2).

**See also p. 865, vol. II.

(c) For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1836) on the date an agreement covering him is entered into under subsection (a) or he becomes an eligible individual (within the meaning of such section) at any time after such date; 93 and he shall be treated as receiving money payments described in subsection (b) if he receives such payments for the month in which the agreement is entered into or any month thereafter.94

(d) In the case of any individual enrolled pursuant to this section— (1) the monthly premium to be paid by the State shall be determined under section 1839 (without any increase under subsection

(c) thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in

which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date 95 as may be specified in the agreement; and (3) his coverage period attributable to the agreement with the State under this section shall end on the last day of which-

ever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h)) for medical assistance,96 or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under title II or to an annuity or pension under the Railroad Retirement Act of

1937.97

(e) Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d) (3) shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1837 in the

initial general enrollment period provided by section 1837(c).

(f) With respect to eligible individuals receiving money payments under the plan of a State approved under title I, X, XIV, or XVI or part A of title IV,98 or eligible to receive medical assistance under the plan of such State approved under title XIX,99 if the agreement entered into under this section so provides, the term "carrier" as defined in section 1842(f) also includes the State agency, specified in such agreement, which administers or supervises the administration of the

⁹³ P.L. 90-248, sec. 222(e)(2)(A), deleted "and before January 1, 1968".

⁹⁴ P.L. 90-248, sec. 222(e)(2)(B), deleted "before January 1968".

⁹⁵ P.L. 90-248, sec. 222(e)(3), deleted "(not later than January 1, 1968)".

⁹⁵ P.L. 90-248, sec. 222(b)(1), inserted "ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h)) for medical assistance" in section 1843(d)(3)(A) which formerly read: "ineligible for money payments of a kind specified in the agreement".

⁹⁷ See p. 865, vol. II.

⁹⁸ P.L. 90-248, sec. 241(e)(2)(A), inserted "or part A of title IV,".

⁹⁸ P.L. 90-248, sec. 222(b)(2)(A), added "or eligible to receive medical assistance under the plan of such State approved under title XIX,".

plan of such State approved under title I, XVI, or XIX. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under titles I, X, XIV, and XVI, and part A of title IV,100 and individuals eligible to receive medical assistance under the plan of the State approved under title XIX.¹⁰¹

(g) (1) The Secretary shall, at the request of a State made before January 1, 1970, 102 enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the second sentence of subsection (b) shall not apply with respect to such

agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) by the second sentence of such subsection-

(A) subsections (c) and (d)(2) shall be applied as if such subsections referred to the modification under this subsection (in

lieu of the agreement under subsection (a)),

(B) subsection (d) (3) (B) shall not apply so long as there is in effect a modification entered into by the State under this sub-

section, and

(C) notwithstanding subsection (e), in the case of any termination described in such subsection, such individual may terminate his enrollment under this part by the filing of a notice, before the close of the third month which begins after the date of such termination, that he no longer wishes to participate in the insurance program established by this part (and in such a case, the termination of his coverage period under this part shall take effect as of the close of such third month). 103

(h) (1) The Secretary shall, at the request of a State made before January 1, 1970, enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the coverage group described in subsection (b) and specified in such agreement is broadened to include individuals who are eligible to receive medical assistance under the plan of such State approved under title XIX.

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under title XIX if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any indivdiual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d) (2) shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a)), and subsection (d) (2) (C) shall be applied by substituting "second month following the first month" for "first month." 104

¹⁰⁰ P.L. 90-248, sec. 241(e) (2) (B), inserted ", and part A of title IV".

¹⁰¹ P.L. 90-248, sec. 222(b) (2) (B), added "and individual eligible to receive medical assistance under the plan of the State approved under title XIX".

¹⁰² P.L. 90-248, sec. 222(b) (3), inserted "1970" in lieu of "1968".

¹⁰³ P.L. 89-384, sec. 4(b), enacted April 8, 1966, added section 1843(g).

¹⁰⁴ P.L. 90-248, sec. 222(a), added section 1843(h).

Appropriations To Cover Government Contributions and Contingency Reserve

Sec. 1844. (a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund-

(1) a Government contribution equal to the aggregate premiums payable under this part and deposited in the Trust Fund, and

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited. 105

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 106 for repayable advances (without interest) to the Trust Fund, an amount equal to \$18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

Part C—Miscellaneous Provisions

Definition of Services, Institutions, etc.

Sec. 1861. For purposes of this title—

Spell of Illness

(a) The term "spell of illness" with respect to any individual means

a period of consecutive days-

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A,

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a

hospital nor an inpatient of an extended care facility.

¹⁰⁵ P.L. 90-248, sec. 167(a), revised section 1844(a) in its entirety. Prior to such amendment, this section read: "There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund, a Government contribution equal to the aggregate premiums payable under this part."

106 P.L. 90-248, sec. 167(b), inserted "1969" in lieu of "1967".

Inpatient Hospital Services

(b) The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resi-

dent, or intern; and

(5) the services of a private-duty nurse or other private-duty

attendant.

Paragraph (4) shall not apply to services provided in the hospital by an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association.

Inpatient Psychiatric Hospital Services

(c) The term "inpatient psychiatric hospital services" means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

Inpatient Tuberculosis Hospital Services

(d) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Hospital

(e) The term "hospital" (except for purposes of sections 1814(d) and 1835(b), 107 subsection (a) (2) of this section, paragraph (7) of this subsection, and subsections (i) and (n) of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

¹⁰⁷ P.L. 90-248, sec. 129(e) (9) (C) (i), inserted "sections 1814(d) and 1835(b)," in lieu of "section 1814(d)". Applicable with respect to services furnished after March 31, 1968.

(3) has bylaws in effect with respect to its staff of physicians; (4) has a requirement that every patient must be under the care

of a physician;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times;

(6) has in effect a hospital utilization review plan which meets

the requirements of subsection (k);

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing; and

(8) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution, except that such other requirements may not be higher than the comparable requirements prescribed for the accreditation of hospitals by the Joint Commission on Accreditation of Hospitals (subject to the second sentence

of section 1863).

For purposes of subsection (a) (2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1814(d) and 1835(b) (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), 108 and subsections (1) and (n) of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in section 1861(j)(1)(A) and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r) to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. 109

Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a) (2), include any institution which is primarily for the care and treatment of mental diseases or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g) or unless it is a psychiatric hospital (as defined in subsection (f)). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as

¹⁰⁸ P.L. 90-248, sec. 129(c)(9)(C)(ii), inserted "and 1835(b) (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such section)," in lieu of "(including determination of whether an individual received inpatient hospital services for purposes of such section)". Applicable with respect to services furnished after March 31, 1968.

¹⁰⁹ P.L. 90-248, sec. 143(a), Inserted clauses (i), (ii), and (iii) in lieu of "meets the requirements of paragraphs (1), (2), (3), (4), (5), and (7) of this subsection". Effective as of July 1, 1966.

may be provided in regulations.¹¹⁰ For provisions deeming certain requirements of this subsection to be met in the case of accredited institutions, see section 1865.

Psychiatric Hospital

(f) The term "psychiatric hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (8)

of subsection (e);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the in-

stitution; and

(5) is accredited by the Joint Commission on Accreditation

of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "pschiatric hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Tuberculosis Hospital

(g) The term "tuberculosis hospital" means an institution which— (1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;

(2) satisfies the requirements of paragraphs (3) through (8)

of subsection (e);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals covered by the insurance program established by part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of

Hospitals. In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part

 $^{^{110}\,\}mathrm{The}$ regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Extended Care Services

(h) The term "extended care services" means the following items and services furnished to an inpatient of an extended care facility and (except as provided in paragraphs (3) and (6)) by such extended care facility—

(1) nursing care provided by or under the supervision of a

registered professional nurse;

(2) bed and board in connection with the furnishing of such

nursing care;

(3) physical, occupational, or speech therapy furnished by the extended care facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the extended care facility, as are ordinarily furnished by such facility for the care and treatment

of inpatients;

(6) medical services provided by an intern or resident-intraining of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (1)), under a teaching program of such hospital approved as provided in the last sentence of subsection (b), and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients

as are generally provided by extended care facilities;

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

Post-Hospital Extended Care Services

(i) The term "post-hospital extended care services" means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the extended care facility within 14 days after discharge from such hospital; and an individual shall be deemed not to have been discharged from an extended care facility if, within 14 days after discharge therefrom, he is admitted to such facility or any other extended care facility.

Extended Care Facility

(j) The term "extended care facility" means (except for purposes of subsection (a)(2)) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the require-

ments of subsection (1)) with one or more hospitals having agreements in effect under section 1866 and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilita-

tion of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision of review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical

staff responsible for the execution of such policies;

(4) (A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dis-

pensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the re-

quirements of subsection (k);

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(10) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary (subject to the second sentence of section 1863);

except that such term shall not (other than for purposes of subsection (a)(2)) include any institution which is primarily for the care and treatment of mental diseases or tuberculosis. For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term 'extended care facility' also includes an institution described in paragraph (1) of subsection (y), to the extent and subject to the limitations provided in such subsection.

Utilization Review

(k) A utilization review plan of a hospital or extended care facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this title and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health

facilities and services;

·(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians, with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and extended care facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, 111 with such review to be made as promptly as possible, after each day so specified, and in no event later than

one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay

in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or extended care facility where, because of the small size of the institution, or (in the case of an extended care facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, 112 it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection.

Agreements for Transfer Between Extended Care Facilities and Hospitals

(1) A hospital and an extended care facility shall be considered to have a transfer agreement in effect if, by reason of a written agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the extended care facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any extended care facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which

¹¹¹ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
112 See footnote 111, this title.

such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under section 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this title.

Home Health Services

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or un-

der the supervision of a registered professional nurse;

(2) physical, occupational, or speech therapy;

(3) medical social services under the direction of a physician; (4) to the extent permitted in regulations, 113 part-time or inter-

mittent services of a home health aide;

(5) medical supplies (other than drugs and biologicals), and

the use of medical appliances, while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b); and

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or extended care facility, or at a rehabilitation center which meets such standards as may be pre-

scribed in regulations, 114 and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A), but not including transportation of the individual in connection with any such item or service;

¹¹⁸ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
114 See footnote 113, this title.

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

Post-Hospital Home Health Services

(n) The term "post-hospital home health services" means home health services furnished an individual within one year after his most recent discharge from a hospital of which he was an inpatient for not less than 3 consecutive days or (if later) within one year after his most recent discharge from an extended care facility of which he was an inpatient entitled to payment under part A for post-hospital extended care services, but only if the plan covering the home health services (as described in subsection (m)) is established within 14 days after his discharge from such hospital or extended care facility.

Home Health Agency

(o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services

and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing; and

(5) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or

organization;

except that such term shall not include a private organization which is not a nonprofit organization exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954 (or a subdivision of such organization) unless it is licensed pursuant to State law and it meets such additional standards and requirements as may be prescribed in regulations; 115 and except that for purposes of part A such term shall not include any agency or organization which is primarily for the care and treatment of mental diseases.

¹¹⁵ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

Outpatient Physical Therapy Services 116 117

(p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient-

(1) who is under the care of a physician (as defined in section

1861(r)(1), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established, and is periodically reviewed, by a physician (as so defined);

excluding, however-(3) any item or service if it would not be included under sub-

section (b) if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency,

unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Sec-

retary may find necessary, or

¹¹⁶ P.L. 90-248, sec. 129(c) (10), repealed former section 1861(p) in its entirety, applicable with respect to services furnished after March 31, 1968. Prior to such amendment, this section read: "Outpatient Hospital Diagnostic Services

[&]quot;(p) The term 'outpatient hospital diagnostic services' means diagnostic services—
 "(1) which are furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital; and
 "(2) which are ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

arrangements) to its outpatients for the purpose of diagnostic stady, excluding, however—

"(3) any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital; and

"(4) any services furnished under such arrangements unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff."

"P.L. 90-248, sec. 133(b), inserted new section 1861(p), applicable to services furnished after June 30, 1968.

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

Physicians' Services

(q) The term "physicians' services" means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in the last sentence of subsection (b)).

Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dentistry or of dental or oral surgery who is legally authorized to practice dentistry by the State in which he performs such function but only with respect to (A) surgery related to the jaw or any structure contiguous to the jaw or (B) the reduction of any fracture of the jaw or any facial bone, or (3) except for the purposes of section 1814(a), section 1835, and subsections (j), (k), (m), and (o) of this section, a doctor of podiatry or surgical chiropody, but (unless clause (1) of this subsection also applies to him) only with respect to functions which he is legally authorized to perform as such by the State in which he performs them. 118

Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services; 119

(1) physicians' services;

(2) (A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, 120 be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

(B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be selfadministered) incident to physicians' services rendered to out-

patients;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

¹¹⁸ P.L. 90-248, sec. 127(a) (2), added new subparagraph (3). Applicable with respect to services furnished after December 31, 1967.
119 P.L. 90-248, sec. 144(a), deleted parenthetical clause in section 1861(s), which formerly read: "(unless they would otherwise constitute inpatient hospital services, extended care services, or home health services)". Applicable with respect to services furnished after March 31, 1968.
120 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study; 121 and 122

(D) outpatient physical therapy services; 123

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary), 124 diagnostic laboratory tests, and other diagnostic tests:

(4) X-ray, radium, and radioactive isotope therapy, including

materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used

for reduction of fractures and dislocations;

(6) 125 durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e) (1) or (j) (1) of this section),126 whether furnished on a rental basis or purchased;127

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only

to the extent provided in regulations; 128

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ, including replacement of such devices; and

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in

the patient's physical condition.

No diagnostic tests performed in any laboratory which is independent of a physician's office or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1814(d)) 129 shall be included within paragraph (3) unless such laboratory-

(10) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency

¹²⁴ P.L. 90-248, sec. 129(a)(2), deleted the phrase "physicians' bills, and hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients' and inserted after "physicians' bills;" new subparagraphs (B) and (C). Applicable with respect to services furnished after March 31, 1968.

125 P.L. 90-248, sec. 133(a)(2), inserted "and" after subparagraph (C). Applicable with respect to services furnished after June 30, 1968.

125 P.L. 90-248, sec. 133(a)(3), added subparagraph (D). Applicable to services furnished after June 30, added parenthetical phrase to paragraph 3. Applicable with respect to services furnished after December 31, 1967.

125 P.L. 90-248, sec. 132(a), deleted "rental of".

126 P.L. 90-248, sec. 132(a), deleted "rental of".

127 P.L. 90-248, sec. 132(a), deleted "rental of".

128 P.L. 90-248, sec. 132(a), added the clause "whether furnished on a rental basis or purchased;" Applicable with respect to items purchased after December 31, 1967.

126 P.L. 90-248, sec. 144(a), inserted "other than in chapter III of title 20 of the Code of Federal Regulations.

of Federal Regulations.

129 P.L. 90-248, sec. 144(b), inserted the parenthetical clause "(which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1814(d))". Applicable with respect to services furnished after March 31, 1968.

of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(11) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are per-

formed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2) (C) any item or service (except services referred to in paragraph (1)) which—

(12) would not be included under subsection (b) if it were fur-

nished to an inpatient of a hospital; or

(13) is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its

organized medical staff. 130

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1814(d) shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.¹³¹

Drugs and Biologicals

(t) The term "drugs" and the term "biologicals", except for purposes of subsection (m) (5) of this section, include only such drugs and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospitals.

Provider of Services

(u) The term "provider of services" means a hospital, extended care facility, or home health agency.

Reasonable Cost

(v) (1) The reasonable cost of any services shall be determined in accordance with regulations ¹³² establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such

¹²⁰ P.L. 90-248, sec. 129(b), added a new sentence after paragraph (11), including paragraphs (12) and (13). Applicable with respect to services furnished after March 31, 1968.
121 P.L. 90-248, sec. 144(c), added the last sentence after paragraph 1861(s)(13). Applicable with respect to services furnished after March 31, 1968.
122 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

services. In prescribing the regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (A) take into account both direct and indirect costs of providers of services in order that, under the methods of determining costs, the costs with respect to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (B) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive.

Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the

Federal Hospital Insurance Trust Fund. 133

(2) (A) If the bed and board furnished as part of inpatient hospital services (including inpatient tubercluosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this title with respect to such services may not exceed an amount equal to the reasonable cost of such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this title furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only the equivalent of the reasonable cost of the items or services with respect to which such payment may be made.

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpa-

¹³⁸ P.L. 89-713, sec. 7, added the last two sentences to section 1861(v)(1). Effective November 2, 1966.

tient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private accommodations and the use of such other accommodations rather than semi-private accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this title, the amount of the payment with respect to such bed and board under part A shall be the reasonable cost of such bed and board furnished in semi-private accommodations (determined pursuant to paragraph (1)) minus the difference between the charge customarily made by the hospital or extended care facility for bed and board in semi-private accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) For purposes of this subsection, the term "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

Arrangements for Certain Services

(w) The term "arrangements" is limited to arrangements under which receipt of payment by the hospital, extended care facility, or home health agency (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this title, discharges the liability of such individual or any other person to pay for the services.

State and United States

(x) The terms "State" and "United States" have the meaning given to them by subsections (h) and (i), respectively, of section 210.

Post-Hospital Extended Care in Christian Science Extended Care Facilities

(y) (1) The term "extended care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only (except for purposes of subsection (a)(2)) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations.¹³⁴

(2) Nothwithstanding any other provision of this title, payment under part A may not be made for services furnished an individual in an extended care facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A may not

be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in an extended care facility to which paragraph (1) applies after—

¹²⁴ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

125 See footnote 134, this title.

(i) such services have been furnished to him in such a

facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in an extended care facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in an extended care facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in an

extended care facility to which such paragraph applies.

(3) The amount payable under part A for post-hospital extended care services furnished an individual during any spell of illness in an extended care facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1813(a)(3)). 136

(4) For purposes of subsection (i), the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and require-

ments as may be provided in regulations.137

Exclusions From Coverage

Sec. 1862. (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1) which are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a

malformed body member;

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for;

(3) which are paid for directly or indirectly by a governmental entity (other than under this Act and other than under a health benefits or insurance plan established for employees of such an entity), except in such cases as the Secretary may specify;

(4) which are not provided within the United States (except for emergency inpatient hospital services furnished outside the United States under the conditions described in section 1814(f));

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items;

(7) where such expenses are for routine physical checkups, eyeglasses or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state

P.L. 90-248, sec. 129(c)(11), inserted "1813(a)(3)" in lieu of "1813(a)(4)". Applicable with respect to services furnished after March 31, 1968.
 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

of the eyes, 138 hearing aids or examinations therefor, or immunizations;

(8) where such expenses are for orthopedic shoes or other sup-

portive devices for the feet;

(9) where such expenses are for custodial care;

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth; or

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

(C) routine foot care (including the cutting or removal of corns, warts, or calluses, the trimming of nails, and other

routine hygienic care).139

(b) Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State. Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under such a law or plan.

Consultation With State Agencies and Other Organizations To Develop Conditions of Participation for Providers of Services

Sec. 1863. In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e) (8), (f) (4), (g) (4), (j) (10), and (o) (5) of section 1861, the Secretary shall consult with the Health Insurance Benefits Advisory Council established by section 1867, appropriate State agencies, and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved under title I, XVI, or XIX, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified

¹²⁸ P.L. 90-248, sec. 128, added "procedures performed (during the course of any eye examination) to determine the refractive state of the eyes,".

¹²⁹ P.L. 90-248, sec. 127(b) (3), added paragraph (13). Applicable with respect to services furnished after December 31, 1967.

by the State or subdivision) in such institutions in such State or subdivision.

Use of State Agencies To Determine Compliance by Providers of Services With Conditions of Participation

Sec. 1864. (a) The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or extended care facility, or whether an agency therein is a home health agency, or whether a laboratory meets the requirements of paragraphs (10) and (11) of section 1861(s), or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1861(p)(4). To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, extended care facility, or home health agency (as those terms are defined in section 1861) may be treated as such by the Secretary.

(b) The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a), and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of

such services.

Effect of Accreditation

Sec. 1865. Except as provided in the second sentence of section 1863, an institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e) (except paragraph (6) thereof) if such institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals. If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan or imposes another requirement which serves substantially the same purpose, the Secretary is authorized to find that all institutions so accredited by the Commission comply also with section 1861(e) (6). In addition, if the Secretary finds that accreditation of an institution or agency by

¹⁴⁰ P.L. 90-248, sec. 133(f), added ", or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1861(p)(4)." Applicable to services furnished after June 30, 1968.

141 P.L. 90-248, sec. 228(b), deleted the last sentence of section 1864(a) which formerly read: "The Secretary may also, pursuant to agreement, utilize the services of State health agencies and other appropriate State agencies (and the appropriate local agencies) to do any one or more of the following: (1) to provide consultative services to institutions or agencies to assist them (A) to establish and maintain fiscal records necessary for purposes of this title, or otherwise to qualify as hospitals, extended care facilities, or home health agencies, or (B) to provide information which may be necessary to permit determination under this title as to whether payments are due and the amounts thereof, and (2) to provide consultative services to institutions, agencies, or organizations to assist in the establishment of utilization review procedures meeting the requirements of section 1861(k) and in evaluating their effectiveness." Effective July 1, 1969.

the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1861 (e), (j), or (o), as the case may be, are met, he may, to the extent he deems it appropriate, treat such institution or agency as meeting the condition or conditions with respect to which he made such finding.

Agreements With Providers of Services

Sec. 1866. (a) (1) Any provider of services shall be qualified to participate under this title and shall be eligible for payments under

this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)), and

(B) to make adequate provision for return (or other disposition, in accordance with regulations) 142 of any moneys incor-

rectly collected from such individual or other person.

(2) (A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1813(a)(1) or (a)(3), 143 section 1833(b), or section 1861(y)(3) with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B.144 In the case of items and services described in section 1833(c), clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section.

(B) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment

may be made under this title.

(C) A provider of services may in accordance with its customary practice also appropriately charge 145 any such individual for any

¹⁴² The regulations of the Secretary are contained in chapter III of title 20 of the Code

¹⁴² The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
145 P.L. 90-248, sec. 129(c)(12)(A)(i), inserted "or (a)(3)" in lieu of "; (a)(2), or (a)(4)". Applicable with respect to services furnished after March 31, 1968.
144 P.L. 90-248, sec. 129(c)(12)(A)(ii), deleted the clause in section 1866(a)(2)(A) which formerly read: "or, in the case of outpatient hospital diagnostic services, for which payment is made under part A". Applicable with respect to services furnished after March 31, 1968.
145 P.L. 90-248, sec. 135(b)(1), inserted "may in accordance with its customary practice also appropriately charge" in lieu of "may also charge". Applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.

whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) 146 furnished him with respect to which a deductible is imposed under section 1813(a) (2), 147 except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) 148 shall be deducted from any payment to such provider under this title, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined) 148 and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) 148 has been replaced on behalf of such individual or arrangements have been made for its replacement on his behalf.

For purposes of clause (iii) of the preceding sentence, whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under

section 1813(a) (2).149

(b) An agreement with the Secretary under this section may be terminated-

(1) by the provider of services at such time and upon such notice to the Secretary and the public as may be provided in regulations, 150 except that notice of more than 6 months shall not be

required, or

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, 151 but only after the Secretary has determined (A) that such provider of services is not complying substantially with the provisions of such agreement, or with the provisions of this title and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1861, or (C) that such provider of services has failed to provide such information as the Secretary finds necessary to determine whether payments are or were due under this title and the amounts thereof, or has refused to permit such examination of its fiscal and other records by or on behalf of the Secretary as may be necessary to verify such information.

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital service) or post-hospital extended care services, with respect to such services furnished to any individual who is admitted

¹⁴⁶ P.L. 90-248, sec. 135(b) (2), inserted "(or equivalent quantities of packed red blood cells, as defined under regulations)". Applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.

147 P.L. 90-248, sec. 129(c) (12) (B), inserted "(1813(a) (2)" in lieu of "1813(a) (3)". Applicable with respect to services furnished after March 31, 1968.

148 P.L. 90-248, sec. 135(b) (3), inserted "(or equivalent quantities of packed red blood cells, as so defined)". Applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.

149 P.L. 90-248, sec. 135(b) (4), inserted the last sentence in section 1866(a) (2) (C). Applicable with respect to payment for blood (or packed red blood cells) furnished an individual after December 31, 1967.

150 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

151 See footnote 150, this title.

to the hospital or extended care facility furnishing such services

on or after the effective date of such termination,

(4) (A) with respect to home health services furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual after the calendar year in which such termination is effective, and

(5) with respect to any other items and services furnished on or

after the effective date of such termination.

(c) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, such provider may not file another agreement under this title unless the Secretary finds that the reason for the termination has been removed and that there is reason-

able assurance that it will not recur.

(d) If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1861(k) of long-stay cases in a hospital or extended care facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this title for in-patient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, 152 as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of an extended care facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, 153 and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of

outpatient physical therapy services (as therein defined). 154

Health Insurance Benefits Advisory Council

Sec. 1867. (a) There is hereby created a Health Insurance Benefits Advisory Council which shall consist of 19 persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, govern-

The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

See footnote 152, this title.

154 P.L. 90-248, sec. 133(c), added subsection (e). Applicable to services furnished after June 30, 1968.

ing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include persons who are outstanding in fields related to hospital, medical, and other health activities, persons who are representative of organizations and associations of professional personnel in the field of medicine, and at least one person who is representative of the general public. Each member shall hold office for a term of 4 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than 2 terms. The Secretary may, at the request of the Advisory Council or otherwise, appoint such special advisory professional or technical committees as may be useful in carrying out this title. Members of the Advisory Council and members of any such advisory or technical committee, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council or of such committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Advisory Council shall meet as frequently as the Secretary deems necessary. Upon request of 5 or more members, it shall be the duty of the Secretary to call a meeting of the Advisory Council.

(b) It shall be the function of the Advisory Council (1) to advise the Secretary on matters of general policy in the administration of this title and in the formulation of regulations under this title, and (2) to study the utilization of hospital and other medical care and services for which payment may be made under this title with a view to recommending any changes which may seem desirable in the way in which such care and services are utilized or in the administration of the programs established by this title, or in the provisions of this title. The Advisory Council shall make an annual report to the Secretary on the performance of its functions, including any recommendations it may have with respect thereto, and such report shall

be transmitted promptly by the Secretary to the Congress.

(c) The Advisory Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Advisory Council such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Advisory Council may require to carry out its functions.155

Sec. 1868. [Repealed.] 156

¹⁵⁵ P.L. 90-248, sec. 164(a), added new section 1867. P.L. 90-248, sec. 164(b) provides: "The amendment made by subsection (a) shall not be construed as affecting the terms of office of the members of the Health Insurance Benefits Advisory Council in office on the date of enactment of this Act or their successors. The terms of office of the three additional members of the Health Insurance Benefits Advisory Council first appointed pursuant to the increase in the membership of such Council provided by such amendment shall expire, as designated by the Secretary at the time of appointment, one at the end of the first year, one at the end of the second year, and one at the end of the third year after the date of appointment."

1056 P.L. 90-248, sec. 164(c), repealed section 1868. For the provisions of this section prior to enactment of P.L. 90-248, see p. 704, vol. II.

Determinations: Appeals

Sec. 1869. (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, shall be made by the Secretary in

accordance with regulations 157 prescribed by him.

(b) Any individual dissatisfied with any determination under subsection (a) as to entitlement under part A or part B, or as to amount of benefits under part A where the matter in controversy is \$100 or more, shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and, in the case of a determination as to entitlement or as to amount of benefits where the amount in controversy is \$1,000 or more, to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(c) Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1866(b)(2), shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after

such hearing as is provided in section 205(g).

Overpayments on Behalf of Individuals and Settlement of Claims for Benefits on Behalf of Deceased Individuals 158

Sec. 1870. (a) Any payment under this title to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Where-

(1) more than the correct amount is paid under this title to a provider of services or other person for items or services furnished an individual and the Secretary determines that, within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other per-

(2) any payment has been made under section 1814(e) to a provider of services or other person for items or services furnished an

proper adjustments shall be made, under regulations prescribed 159 (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments-

(3) to which such individual is entitled under title II of this Act or under the Railroad Retirement Act of 1937, 160 as the case

may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under title II of this Act or under the Railroad Retirement Act of 1937,161 as

¹⁵⁷ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
¹⁵⁸ P.L. 90-248, sec. 154(b), added to the title of section 1870, "and Settlement of Claims for Benefits on Behalf of Deceased Individuals".
¹⁵⁹ The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.
¹⁵⁰ See p. 865, vol. II.
¹⁵¹ See footnote 160, this title.

the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits

of such deceased individual under title II of such Act.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1817(g), and section 1841(f), shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1937)¹⁶² the amount of the overpayment as to which the adjustment is to be made.

(c) There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1814(e)) with respect to an individual who is without fault and where such adjustment (or recovery) would defeat the purposes of title II or would be

against equity and good conscience.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) or where adjustment under subsection (b) is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) If an individual, who received services for which payment may be made to such individual under this title, dies, and payment for such services was made (other than under this title), and the individual died before any payment due him under this title with respect to such services was completed, payment of the amount due (includ-

ing the amount of any unnegotiated checks) shall be made-

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such

deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

¹⁶² See footnote 160, this title.

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to

be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in

equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) If an individual who received medical and other health services for which payment may be made under section 1832(a) (1) dies,

and-

(1) no assignment of the right to payments was made by such

individual before his death, and

(2) payment for such services has not been made, payment for such services shall be made to the physician or other person who provided such services, but payment shall be made under this subsection only in such amount and subject to such conditions as would have been applicable if the individual who received the services had not died, and only if the person or persons who provided the services agrees that the reasonable charge is the full charge for the services.¹⁶³

Regulations

Sec. 1871. The Secretary shall prescribe such regulations ¹⁶⁴ as may be necessary to carry out the administration of the insurance programs under this title. When used in this title, the term "regulations" means, unless the context otherwise requires, regulations prescribed by the Secretary.

¹⁸⁸ P.L. 90-248, sec. 154(c), added subsections (e) and (f).
164 The regulations of the Secretary are contained in chapter III of title 20 of the Code of Federal Regulations.

Application of Certain Provisions of Title II

Sec. 1872. The provisions of sections 206, 208, and 216(j), and of subsections (a), (d), (e), (f), (h), (i), (j), (k), and (l) of section 205, shall also apply with respect to this title to the same extent as they are applicable with respect to title II.

Designation of Organization or Publication by Name

Sec. 1873. Designation in this title, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

Administration

Sec. 1874. (a) Except as otherwise provided in this title and in the Railroad Retirement Act of 1937, the insurance programs established by this title shall be administered by the Secretary. The Secretary may perform any of his functions under this title directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying

out of his functions under this title.

Studies and Recommendations

Sec. 1875. (a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including the experimentation authorized by section 402 of the Social Security Amendments of 1967), ¹⁶⁶ and shall transmit to the Congress annually a report concerning the operation of such programs.

¹⁸⁵ For selected provisions of the Railroad Retirement Act of 1937, see p. 865, vol. II. See also sec. 111(e) of the Social Security Amendments of 1965 on p. 510, vol. II. ¹⁶⁶ P.L. 90-248, sec. 402(c), inserted the parenthetical clause.

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS ¹

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Appropriation

Sec. 1901. For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent children and of aged, blind, or permanently and totally disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or selfcare, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for medical assistance.

State Plans for Medical Assistance

Sec. 1902. (a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 percentum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969,2 provide for financial participation by the State equal to all of such non-Federal share

¹Title XIX is administered by the Social and Rehabilitation Service, Department of Health, Education, and Welfare. The table of contents does not appear in the law. See footnote 4 of title I for provisions of the Civil Rights Act of 1964 affecting federally

See footnote 4 of title I for provisions of the Civil Mights Act of Sassisted programs.

P.L. 90-248, sec. 234(c), provides:

"(c) Notwithstanding any other provision of law, after June 30, 1968, no Federal funds shall be paid to any State as Federal matching under title I, X, XIV, XVI, or XIX of the Social Security Act for payments made to any nursing home for or on account of any nursing home services provided by such nursing home for any period during which such nursing home is determined not to meet fully all requirements of the State for licensure as a nursing home, except that the Secretary may prescribe a reasonable period or periods of time during which a nursing home which has formerly met such requirements will be eligible for payments which include Federal participation if during such period or periods such home promptly takes all necessary steps to again meet such requirements."

2 P.L. 90-248, sec. 231, inserted "July 1, 1969" in lieu of "July 1, 1970".

or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable

promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; 3

(5) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as

it relates to the aged);

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly

connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to

all eligible individuals;

(9) provide for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services;

³P.L. 90-248, sec. 210(a)(6), inserted subparagraph (B); effective July 1, 1969, or on such earlier date as of which the modification of the State plan to comply with such amendment is approved.

(10) provide for making medical assistance available to all individuals receiving aid or assistance under State plans approved under titles I, X, XIV, and XVI, and part A of title IV; and-

(A) provide that the medical assistance made available to individuals receiving aid or assistance under any such State plan—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to individuals receiving aid

or assistance under any other such State plan, and

(ii) shall not be less in amount, duration, or scope than the medical or remedial care and services made available to individuals not receiving aid or assistance under any such

plan; and

(B) if medical or remedial care and services are included for any group of individuals who are not receiving aid or assistance under any such State plan and who do not meet the income and resources requirements of the one of such State plans which is appropriate, as determined in accordance with standards prescribed by the Secretary, provide-

(i) for making medical or remedial care and services available to all individuals who would, if needy, be eligible for aid or assistance under any such State plan and who have insufficient (as determined in accordance with comparable standards) income and resources to meet the costs of neces-

sary medical or remedial care and services, and

(ii) that the medical or remedial care and services made available to all individuals not receiving aid or assistance under any such State plan shall be equal in amount, dura-

tion, and scope;

except that (I) the making available of the services described in paragraph (4) or (14) of section 1905(a) to individuals meeting the age requirement prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, and (II) the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of the deductibles, cost sharing, or similar charges under part B of title XVIII for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals; 4

(11) (A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan; and (B) effective July 1, 1969, provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organiza-

⁴P.L. 90-248, sec. 223, inserted clause (II); applicable with respect to calendar quarters beginning after June 30, 1967.

tion receiving payments for part or all of the cost of plans or projects under title V, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such plan or project under title V and which are included in the State plan approved under this section and (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to him under section 1903; 5

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A) for inclusion of some institutional and some noninstitu-

tional care and services, and 6

(B) in the case of individuals receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV, for the inclusion of at least the care and services listed in clauses (1) through (5) of section 1905 (a), and ⁷

(C) in the case of individuals not included under subpara-

graph (B) for the inclusion of at least—

(i) the care and services listed in clauses (1) through (5)

of section 1905(a) or

(ii) (I) the care and services listed in any 7 of the clauses numbered (1) through (14) of such section and (II) in the event the care and services provided under the State plan include hospital or skilled nursing home services, physicians' services to an individual in a hospital or skilled nursing home during any period he is receiving hospital services from such hospital or skilled nursing home services from such home, and

(D) for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary and included in the plan) of inpatient hospital services provided under

the plan;

(14) provide that (A) in the case of individuals receiving aid or assistance under State plans approved under titles I, X, XIV, XVI, and part A of title IV, no 8 deduction, cost sharing, or similar charge will be imposed under the plan on the individual with respect to inpatient hospital services furnished him under the plan, and (B) any deduction, cost sharing, or similar charge imposed under the plan with

⁵P.L. 90-248, sec. 302(b), inserted subparagraph (B). ⁶P.L. 90-248, sec. 224, amended paragraph (13) in its entirety; applicable to calendar quarters beginning after December 31, 1967. Prior to this amendment paragraph (13)

quarters beginning after December 31, 1967. Prior to this amendment paragraph (13) provided:

"(13) provide for inclusion of some institutional and some noninstitutional care and services, and, effective July 1, 1967, provide (A) for inclusion of at least the care and services listed in clauses (1) through (5) of section 1905(a), and (B) for payment of the reasonable cost (as determined in accordance with standards approved by the Secretary and included in the plan) of inpatient hospital services provided under the plan;

"P.I., 90-248, sec. 224(c), effective with respect to calendar quarters beginning after June 30, 1970, amends subparagraph (A) to read as follows:

"(A) (i) for the inclusion of some institutional and some non-institutional care and services, and

services, and

⁽ii) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing home services, and".

*P.L. 90-248, sec. 235(a) (1), inserted "in the case of individuals receiving aid or assistance under State plans approved under titles I, X, XIV, XVI, and part A of title IV, no" in lieu of "no"; effective in the case of calendar quarters beginning after December 31, 1967.

respect to inpatient hospital services or 9 any other medical assistance furnished to an individual thereunder, and any enrollment fee, premium, or similar charge imposed under the plan, shall be reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to the recipient's

income or his income and resources;

(15) in the case of eligible individuals 65 years of age or older who are covered by either or both of the insurance programs established by title XVIII, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such title is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources; 10

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent there-

from:

(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV, based on the variations between shelter costs in urban areas and in rural areas) 11 for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, if he met the requirements as to need, be eligible for aid or assistance in the form of money payments under a State plan approved under title I, X, XIV, or XVI, or part A of title IV) as would not be disregarded (or set aside for future needs) in determining his eligibility for and amount of such aid or assistance under such plan, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient

<sup>P.L. 90-248, sec. 235 (a) (2), inserted "inpatient hospital services or" after "respect to", and inserted "to an individual" in lieu of "him"; effective in the case of calendar quarters beginning after December 31, 1967.
P.L. 90-248, sec. 235 (a) (3), amended paragraph (15) in its entirety; effective in the case of calendar quarters beginning after December 31, 1967. Prior to such amendment paragraph (15) read as follows:

"(15) in the case of eligible individuals 65 years of age or older who are covered by either or both of the insurance programs established by title XVIII, provide—

(A) for meeting the full cost of any deductible imposed with respect to any such individual under the insurance program established by part A of such title; and

(B) where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to any such individual under the insurance program established by part B of such title is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;"
P.L. 90-248, sec. 238, effective July 1, 1969, substituted the parenthetical clause for the clause "(which shall be comparable for all groups)".</sup>

is such individual's spouse or such individual's child who is under age 21 or is blind or permanently and totally disabled; and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care

recognized under State law;

(18) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received such assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 21 or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of such individual under the plan;

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for

mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodical determination of his need for con-

tinued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 3(a)(4)(A)(i) and (ii) or section 1603(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of in-

stitutional care for such patients;

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality; and

(23) provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment

basis), who undertakes to provide him such services; 12

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing homes, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this Act, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this Act, and (C) to provide information needed to determine payments due under this Act on account of care and services furnished to individuals; 13

(25) provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17) (B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual, the State or

¹² P.L. 90-248, sec. 227, added paragraph (23) applicable with respect to calendar quarters beginning after June 30, 1969; except in the case of Puerto Rico, the Virgin Islands, and Guam, where it applies only with respect to calendar quarters beginning after June 30, 1972.

¹³ P.L. 90-248, sec. 228(a), added paragraph (24).

local agency will seek reimbursement for such assistance to the extent

of such legal liability; 14

(26) effective July 1, 1969, provide (A) for a regular program of medical review (including medical evaluation of each patient's need for skilled nursing home care) or (in the case of individual's who are eligible therefor under the State plan) need for care in a mental hospitals, a written plan of care, and, where applicable, a plan of rehabilitation prior to admission to a skilled nursing home; (B) for periodic inspections to be made in all skilled nursing homes and mental institutions (if the State plan includes care in such institutions) within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel) of (i) the care being provided in such nursing homes (and mental institutions, if care therein is provided under the State plan) to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular nursing homes (or institutions) to meet the current health needs and promote the maximum physical well-being of patients receiving care in such homes (or institutions), (iii) the necessity and desirability of the continued placement of such patients in such nursing homes (or institutions), and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections together with any recommendations to the State agency administering or supervising the administration of the State plan; 15

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as

the State agency may from time to time request; 16

(28) provide that any skilled nursing home receiving payments

under such plan must-

(A) supply to the licensing agency of the State full and complete information as to the identity (i) of each person having (directly or indirectly) an ownership interest of 10 per centum or more in such nursing home, (ii) in case a nursing home is organized as a corporation, of each officer and director of the corporation, and (iii) in case a nursing home is organized as a partnership, of each partner; and promptly report any changes which would affect the current accuracy of the information so required to be supplied:

(B) have and maintain an organized nursing service for its patients, which is under the direction of a professional registered

 ¹⁴ P.L. 90-248, sec. 229(a), added paragraph (25); applicable with respect to legal liabilities of third parties arising after March 31, 1968.
 15 P.L. 90-248, sec. 234(a), added paragraphs (26), (27), and (28); and sec. 234(b) makes such paragraphs effective on January 1, 1969, unless otherwise specified in the body

thereof.

16 See footnote 15 above.

nurse who is employed full-time by such nursing home, and which is composed of sufficient nursing and auxiliary personnel to provide adequate and properly supervised nursing services for such patients during all hours of each day and all days of each week;

(C) make satisfactory arrangements for professional planning and supervision of menus and meal service for patients for whom special diets or dietary restrictions are medically prescribed;

(D) have satisfactory policies and procedures relating to the maintenance of medical records on each patient of the nursing home, dispensing and administering of drugs and biologicals, and assuring that each patient is under the care of a physician and that adequate provisions is made for medical attention to any

patient during emergencies;

(E) have arrangements with one or more general hospitals under which such hospital or hospitals will provide needed diagnostic and other services to patients of such nursing home, and under which such hospital or hospitals agree to timely acceptance, as patients thereof, of acutely ill patients of such nursing home who are in need of hospital care; except that the State agency may waive this requirement wholly or in part with respect to any nursing home meeting all the other requirements and which, by reason of remote location or other good and sufficient reason, is unable to effect such an arrangement with a hospital; and

(F) (i) meet (after December 31, 1969) such provisions of the Life Safety Code of the National Fire Protection Association (21st Edition, 1967) as are applicable to nursing homes; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, specific provisions of such code which, if rigidly applied, would result in unreasonable hardship upon a nursing home, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such skilled nursing home; and except that the requirements set forth in the preceding provisions of this subclause (i) shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing homes; and (ii) meet conditions relating to environment and sanitation applicable to extended care facilities under title XVIII; except that the State agency may waive in accordance with regulations of the Secretary, for such periods as it deems appropriate, any requirement imposed by the preceding provisions of this subclause (ii) if such agency finds that such requirement, if rigidly applied, would result in unreasonable hardship upon a nursing home, but only if such agency makes a determination (and keeps a written record setting forth the basis of such determination) that such waiver will not adversely affect the health and safety of the patients of such nursing home; 17

(29) include a State program which meets the requirements set forth in section 1908, for the licensing of administrators of nursing

homes; and 18

 $^{^{17}\,\}mathrm{See}$ footnote 15 above. $^{18}\,\mathrm{P.L.}$ 90–248, sec. 238, added paragraph (29); effective July 1, 1970.

(30) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments (including payments for any drugs provided under the plan) are not in excess of reasonable charges consistent with efficiency, economy, and quality of care.19

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X (or title XVI, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under title I (or title XVI, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under title X (or title XVI, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title (except for purposes of paragraph (10)).

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for medical assist-

ance under the plan-

(1) an age requirement of more than 65 years; or

(2) effective July 1, 1967, any age requirement which excludes any individual who has not attained the age of 21 and is or would, except for the provisions of section 406(a)(2), be a dependent child under part A of title IV; or

(3) any residence requirement which excludes any individual

who resides in the State; or

(4) any citizenship requirement which excludes any citizen of

the United States.

(c) Notwithstanding subsection (b), the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance (other than so much of the aid or assistance as is provided for under the plan of the State approved under this title) provided for eligible individuals under a plan of such State approved under title I, X, XIV, or XVI, or part A of title IV.

Payment to States

1111212 1:0 Sec. 1903. (a) From the sums appropriated therefor, the Secretary (except as otherwise provided in this section and section 1117) shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing January 1, 1966—

¹⁹ P.L. 90-248, sec. 237, added paragraph (30); effective April 1, 1968.

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b)) of the total amount expended during such quarter as medical assistance under the State plan (including expenditures for premiums under part B of title XVIII, for individuals who are recipients of money payments under a State plan approved under title I, X, XIV, or XVI, or part A of title IV and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of title XVIII, other insurance premiums 20 for medical or any other type of remedial care or the cost thereof); plus

(2) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel of the State agency or any other public agency; 21 plus

(3) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State

plan.

(b) (1) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to individuals 65 years of age or older who are patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

(2) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a) (1) for any State for any quarter beginning after December 31, 1967, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over which would not have been so expended if the indi-

²⁰ P.L. 90-248, sec. 222(d), inserted "and, except in the case of individuals sixty-five years of age or older who are not enrolled under part B of title XVIII, other insurance premiums" in lieu of "and other insurance premiums", effective with respect to calendar quarters beginning after December 31, 1967.

²¹ P.L. 90-248, sec. 225, inserted "of the State agency or any other public agency" in lieu of "of the State agency (or of the local agency administering the State plan in the political subdivision)", applicable with respect to expenditures made after December 31, 1967.

viduals involved had been enrolled in the insurance program estab-

lished by part B of title XVIII.22

(c) (1) If the Secretary finds, on the basis of satisfactory information furnished by a State, that the Federal medical assistance percentage for such State applicable to any quarter in the period beginning January 1, 1966, and ending with the close of June 30, 1969, is less than 105 per centum of the Federal share of medical expenditures by the State during the fiscal year ending June 30, 1965 (as determined under paragraph (2)), then 105 per centum of such Federal share shall be the Federal medical assistance percentage (instead of the percentage determined under section 1905(b)) for such State for such quarter and each quarter thereafter occurring in such period and prior to the first quarter with respect to which such a finding is not applicable.

(2) For purposes of paragraph (1), the Federal share of medical expenditures by a State during the fiscal year ending June 30, 1965,

means the percentage which the excess of-

(A) the total of the amounts determined under sections 3, 403, 1003, 1403, and 1603 with respect to expenditures by such State during such year as aid or assistance under its State plans approved under titles I, IV, X, XIV, and XVI, over

(B) the total of the amounts which would have been determined under such sections with respect to such expenditures during such year if expenditures as aid or assistance in the form of medical or any other type of remedial care had not been counted,

is of the total expenditures as aid or assistance in the form of medical or any other type of remedial care under such plans during such year.

(d) (1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a), (b), and (c) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section

1902(a) (25).²³

P.L. 90-248, sec. 222(c), added paragraph (2).
 P.L. 90-248, sec. 229(c), amended subsection (d)(2) by adding the last sentence.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of an estimate by the Secretary under this subsection, any appropriations available for payments under this sec-

tion shall be deemed obligated.

(e) The Secretary shall not make payments under the preceding provisions of this section to any State unless the State makes a satisfactory showing that it is making efforts in the direction of broadening the scope of the care and services made available under the plan and in the direction of liberalizing the eligibility requirements for medical assistance, with a view toward furnishing by July 1, 1975, comprehensive care and services to substantially all individuals who meet the plan's eligibility standards with respect to income and resources, including services to enable such individuals to attain or retain independence or self-care.

(f)(1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this para-

graph.

(B) (i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133½ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of title IV of this Act.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of

families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of \$100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of \$100 or such other amount, as the case may be.

(2) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family for medical care or for any other type of remedial care recognized under State law.

(3) For purposes of paragraph (1) (B), in the case of a family consisting of only one individual, the "highest amount which would ordinarily be paid" to such family under the State's plan approved under part A of title IV of this Act shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources)

consisting of one person if such plan (without regard to section 408)

provided for aid to such a family.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual who, at the time of the provision of the medical assistance giving rise to such expenditure-

(A) is a recipient of aid or assistance under a plan of such State which is approved under title I, X, XIV, or XVI, or part

A of title IV, or

(B) is not a recipient of aid or assistance under such a plan but (i) is eligible to receive such aid or assistance, or (ii) would be eligible to receive such aid or assistance if he were not in a medical institution.24

Operation of State Plans

Sec. 1904. If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds-

(1) that the plan has been so changed that it no longer com-

plies with the provisions of section 1902; or

(2) that in the administration of the plan there is a failure

to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

Definitions

Sec. 1905. For purposes of this title—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals

²⁴ P.L. 90-248, sec. 220(a), added subsection (f).

P.L. 90-248, sec. 220(b), provides:

"(b) (1) In the case of any State whose plan under title XIX of the Social Security Act is approved by the Secretary of Health, Education, and Welfare under section 1902 after July 25, 1967, the amendment made by subsection (a) shall apply with respect to calendar quarters beginning after the date of enactment of this Act.

(2) In the case of any State whose plan under title XIX of the Social Security Act was approved by the Secretary of Health, Education, and Welfare under section 1902 of the Social Security Act prior to July 26, 1967, the amendments made by subsection (a) shall apply with respect to calendar quarters beginning after June 30, 1968, except that—

(A) with respect to the third and fourth calendar quarters of 1968, such subsection shall be applied by substituting in subsection (f) of section 1903 of the Social Security Act 150 percent for 133½ percent each time such latter figure appears in such subsection (f), and

(B) with respect to all calendar quarters during 1969, such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act 140 percent for 133½ percent each time such subsection shall be applied by substituting in subsection (f) of section 1903 of such Act 140 percent for 133½ percent each time such latter figure appears in such subsection (f)."

P.L. 90-248, sec. 248(d), provides that such subsection (f) shall not apply in the case of Puerto Rico, the Virgin Islands or Guam.

not receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV,25 who are—

(i) under the age of 21,

(ii) relatives specified in section 406(b)(1) with whom a child is living if such child, except for section 406(a) (2), is (or would, if needy, be) a dependent child under part A of title IV,

(iii) 65 years of age or older,

(iv) blind,

(v) 18 years of age or older and permanently and totally dis-

abled, or

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under title I, X, XIV, or XVI,²⁶

but whose income and resources are insufficient to meet all of such

cost-

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

(2) outpatient hospital services;

(3) other laboratory and X-ray services;

(4) (A) skilled nursing home services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older; (B) effective July 1, 1969, such early and periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; 27

(5) physicians' services, whether furnished in the office, the patient's home, a hospital, or a skilled nursing home, or elsewhere;

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services; (8) private duty nursing srevices;

(9) clinic services; (10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilita-

tive services;

(14) inpatient hospital services and skilled nursing home services for individuals 65 years or age or over in an institution for tuberculosis or mental diseases: and

(15) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary;

except that such term does not include—

²⁵ P.L. 90-248, sec. 230, added ", and, with respect to physicians' or dentists' services, at the option of the State, to individuals not receiving aid or assistance under the State's plan approved under title I, X, XIV, or XVI, or part A of title IV,".

²⁶ P.L. 90-248, sec. 233(a), added clause (vi).

²⁷ P.L. 90-248, sec. 302(a), amended clause (4) by inserting "(A)" after "(4)", and by adding subclause "B".

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution) : or

a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases. For purposes of clause (vi) of the preceding sentence, a person shall be

For purposes of clause (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under title I, X, XIV, or XVI), and such person is determined, under such a State plan, to be essential to the well being of such individual.²⁸

(b) The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, and Guam shall be 50 per centum.29 The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a) (8); except that the Secretary shall promulgate such percentage as soon as possible after the enactment of this title, which promulgation shall be conclusive for each of the six quarters in the period beginning January 1, 1966, and ending with the close of June 30, 1967.

Advisory Council on Medical Assistance 30

Sec. 1906. For the purpose of advising the Secretary on matters of general policy in the administration of this title (including the relationship of this title and title XVIII) and making recommendations for improvements in such administration, there is hereby created a Medical Assistance Advisory Council which shall consist of twenty-one persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include representatives of State and local agencies and nongovernmental organizations and groups concerned with health, and of consumers of health services, and a majority of the membership of the Advisory Council shall consist of representatives of consumers of health services. Each member shall hold office for a term of four years, except that any member appointed to fill a vacanacy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and except that the terms of office of the

²⁸ P.L. 90-248, sec. 233(b), amended section 1905(a) by adding the last sentence.
²⁹ P.L. 90-248, sec. 248(e), inserted "50 per centum" in lieu of "55 per centum", effective with respect to quarters after 1967.
³⁰ P.L. 90-248, sec. 226, added section 1906.

members first taking office shall expire, as designated by the Secretary at the time of appointment, five at the end of the first year, five at the end of the second year, five at the end of the third year, and six at the end of the fourth year after the date of appointment. A member shall not be eligible to serve continuously for more than two terms. The Secretary may, at the request of the Council or otherwise, appoint such special advisory professional or technical committees as may be useful in carrying out this title. Members of the Advisory Council and members of any such advisory or technical committee, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council or of such committee, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Advisory Council shall meet as frequently as the Secretary deems necessary. Upon request of five or more members, it shall be the duty of the Secretary to call a meeting of the Advisory Council.

OBSERVANCE OF RELIGIOUS BELIEFS 31

Sec. 1907. Nothing in this title shall be construed to require any State which has a plan approved under this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

STATE PROGRAMS FOR LICENSING OF ADMINISTRATORS OF NURSING HOMES 32

Sec. 1908. (a) For purposes of section 1902(a) (29), a "State program for licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients

and established to carry out the purposes of this section.

(c) It shall be the function and duty of such agency or board to— (1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that

 $^{^{32}}$ P.L. 90-248, sec. 232, added section 1907. 32 P.L. 90-248, sec. 236(b), added section 1908 effective on July 1, 1970, except as otherwise specified in the text thereof.

nursing home administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an

individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements

of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administra-

tors of nursing homes who have been licensed as such.

(d) No State shall be considered to have failed to comply with the provisions of section 1902(a) (29) because the agency or board of such State (established pursuant to subsection (b)) shall have granted any waiver, with respect to any individual who during all of the calendar year immediately preceding the calendar year in which the requirements prescribed in section 1902(a) (29) are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such board pursuant to subsection (b) (1) other than such standards as relate to good character or suitability if—

(1) such waiver is for a period which ends after being in effect for two years or on June 30, 1972, whichever is earlier, and

(2) there is provided in the State (during all of the period for which waiver is in effect), a program of training and instruction designed to enable all individuals, with respect to whom any such waiver is granted, to attain the qualifications necessary in order to meet such standards.

(e) (1) There are hereby authorized to be appropriated for fiscal year 1968 and the four succeding fiscal years such sums as may be necessary to enable the Secretary to make grants to States for the purpose of assisting them in instituting and conducting programs of training and instruction of the type referred to in subsection (d) (2).

(2) No grant with respect to any such program shall exceed 75 per centum of the reasonable and necessary cost, as determined by the

Secretary, of instituting and conducting such program.

(f) (1) For the purpose of advising the Secretary and the States in carrying out the provisions of this section, there is hereby created

a National Advisory Council on Nursing Home Administration which shall consist of nine persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include, but not be limited to, representatives of State health officers, State welfare directors, nursing home administrators, and university pro-

grams in public health or medical care administration.

(2) In addition to the function stated in paragraph (1) of this subsection, it shall be the function and duty of the Council (A) to study and identify the core of knowledge that should constitute minimally the training in the field of institutional administration which should qualify an individual to serve as a nursing home administrator; (B) to study and identify the experience in the field of institutional administration that a nursing home administrator should be required to possess; (C) to study and develop model techniques for determining whether an individual possesses such qualifications; (D) to study and develop model criteria for granting waivers under the provisions of subsection (d); (E) to study and develop suggested programs of training referred to in subsection (d); (F) to study, develop, and recommend programs of training and instruction for those desiring to pursue a career in nursing home administration; (G) to complete the functions in (A) through (E) above by July 1, 1969, and submit a written report to the Secretary which report shall be submitted to the States to assist them in carrying out the provisions of this section.

(3) Members of the Council, while attending meetings or conferences thereof or otherwise serving on business of the Council shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding \$100 per day, including travel time, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons

in the Government service employed intermittently.

(4) The Secretary may at the request of the Council engage such technical assistance as may be required to carry out its functions; and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data obtained and prepared by the Department of Health, Education, and Welfare as the Council may require to carry out its functions.

(5) The Council shall be appoined by the Secretary prior to July

1, 1968, and shall cease to exist as of December 31, 1971.

(g) As used in this section, the term—

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as

determined by the Secretary; and
(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

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#### SEC. 31. TAX WITHHELD ON WAGES.

(b) CREDIT FOR SPECIAL REFUNDS OF SOCIAL SECURITY TAX.—

(1) In general.—The Secretary or his delegate may prescribe regulations providing for the crediting against the tax imposed by this subtitle of the amount determined by the taxpayer or the Secretary (or his delegate) to be allowable under section 6413(c) as a special refund of tax imposed on wages. The amount allowed as a credit under such regulations shall, for purposes of this subtitle, be considered an amount withheld at source as tax under section 3402.

(2) YEAR OF CREDIT.—Any amount to which paragraph (1) applies shall be allowed as a credit for the taxable year beginning in the calendar year during which the wages were received. If more than one taxable year begins in the calendar year, such amount shall be allowed as a credit for the last taxable year so beginning.

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#### SEC. 35. PARTIALLY TAX-EXEMPT INTEREST RECEIVED BY INDI-VIDUALS.

(a) In General.—There shall be allowed to an individual, as a credit against the tax imposed by this subtitle for the taxable year, an amount equal to 3 percent of the amount received as interest on obligations of the United States or on obligations of corporations organized under Act of Congress which are instrumentalities of the United States, but only if—

(1) such interest is included in gross income; and

(2) such interest is exempt from normal tax under the Act

authorizing the issuance of such obligations.

(b) Limitations on Amount of Credit.—The credit allowed by subsection (a) shall not exceed whichever of the following is the lesser:

(1) the amount of the tax imposed by this chapter for the taxable year, reduced by the credit allowable under section 33; or

(2) 3 percent of the taxable income for the taxable year.
(c) Certain Nonresident Aliens Ineligible for Credit.—No credit shall be allowed under subsection (a) to a nonresident alien individual with respect to whom a tax is imposed for the taxable year under section 871(a).

(d) Cross Reference.—

For reduction of credit under this section on account of amortizable bond premium, see section 171.

#### SEC. 107. RENTAL VALUE OF PARSONAGES.

In the case of a minister of the gospel, gross income does not include—

(1) the rental value of a home furnished to him as part of his

compensation; or

(2) the rental allowance paid to him as part of his compensation, to the extent used by him to rent or provide a home.

# SEC. 119. MEALS OR LODGING FURNISHED FOR THE CONVENIENCE OF THE EMPLOYER.

There shall be excluded from gross income of an employee the value of any meals or lodging furnished to him by his employer for the convenience of the employer, but only if—

(1) in the case of meals, the meals are furnished on the busi-

ness premises of the employer, or

(2) in the case of lodging, the employee is required to accept such lodging on the business premises of his employer as a condition of his employment.

In determining whether meals or lodging are furnished for the convenience of the employer, the provisions of an employment contract or of a State statute fixing terms of employment shall not be determinative of whether the meals or lodging are intended as compensation.

#### SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) In General.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation

for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use of possession, for purposes of the trade or business, of property, to which the taxpayer has not

taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, Territory, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes in excess of \$3,000.

(b) Charitable Contributions and Gifts Excepted.—No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the require-

ments as to the time of payment, set forth in such section.

(c) Improper Payments to Officials or Employees of Foreign Countries.—No deduction shall be allowed under subsection (a) for any expenses paid or incurred if the payment thereof is made (directly or indirectly) to an official or employee of a foreign country, and if the making of the payment would be unlawful under the laws of the United States if such laws were applicable to such payment and

to such official or employee.

(d) Capital Contributions to Federal National Mortgage Association .-- For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) Appearances, etc., With Respect to Legislation.—
(1) In general.—The deduction allowed by subsection (a) shall include all the ordinary and necessary expenses (including, but not limited to, traveling expenses described in subsection (a) (2) and the cost of preparing testimony) paid or incurred during the taxable year in carrying on any trade or business-

(A) in direct connection with appearances before, submission of statements to, or sending communications to, the committees, or individual members, of Congress or of any legislative body of a State, a possession of the United States, or a political subdivision of any of the foregoing with respect to legislation or proposed legislation of direct interest to the taxpayer, or

(B) in direct connection with communication of information between the taxpayer and an organization of which he is a member with respect to legislation or proposed legislation of direct interest to the taxpayer and to such organization, and that portion of the dues so paid or incurred with respect to any organization of which the taxpayer is a member which is attributable to the expenses of the activities described in subparagraphs (A) and (B) carried on by such organization.

(2) LIMITATION.—The provisions of paragraph (1) shall not

(2) LIMITATION.—The provisions of paragraph (1) shall not be construed as allowing the deduction of any amount paid or incurred (whether by way of contribution, gift, or otherwise)—

(A) for participation in, or intervention in, any political

campaign on behalf of any candidate for public office, or

(B) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections, or referendums.

(f) Cross Reference.—

For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

#### SEC. 172. NET OPERATING LOSS DEDUCTION.

- (a) Deduction Allowed.—There shall be allowed as a deduction for the taxable year an amount equal to the aggregate of (1) the net operating loss carryovers to such year, plus (2) the net operating loss carrybacks to such year. For purposes of this subtitle, the term "net operating loss deduction" means the deduction allowed by this subsection.
- (c) NET OPERATING Loss DEFINED.—For purposes of this section, the term "net operating loss" means (for any taxable year ending after December 31, 1953) the excess of the deductions allowed by this chapter over the gross income. Such excess shall be computed with the modifications specified in subsection (d).

(d) Modifications.—The modifications referred to in this section

are as follows:

(1) NET OPERATING LOSS DEDUCTION.—No net operating loss deduction shall be allowed.

(2) Capital gains and losses of taxpayers other than corporation—rations.—In the case of a taxpayer other than a corporation—

(A) the amount deductible on account of losses from sales or exchanges of capital assets shall not exceed the amount includible on account of gains from sales or exchanges of capital assets; and

(B) the deduction for long-term capital gains provided by

section 1202 shall not be allowed.

(3) Deduction for Personal exemptions.—No deduction shall be allowed under section 151 (relating to personal exemptions). No deduction in lieu of any such deduction shall be allowed.

(4) Nonbusiness deductions of taxpayers other than corporations.—In the case of a taxpayer other than a corporation, the deductions allowable by this chapter which are not attributable to a taxpayer's trade or business shall be allowed only to the extent of the amount of the gross income not derived from such trade or business. For purposes of the preceding sentence—

(A) any gain or loss from the sale or other disposition of—
(i) property, used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, or

(ii) real property used in the trade or business, shall

be treated as attributable to the trade or business;

(B) the modifications specified in paragraph (1), (2) (B), and (3) shall be taken into account;

(C) any deduction allowable under section 165(c) (3) (relating to casualty losses) shall not be taken into account; and

(D) any deduction allowed under section 404 or section 405(c) to the extent attributable to contributions which are made on behalf of an individual who is an employee within the meaning of section 401(c)(1) shall not be treated as attributable to the trade or business of such individual.

(5) Special deductions for corporations.—No deduction shall be allowed under section 242 (relating to partially tax-exempt interest) or under section 922 (relating to Western Hemi-

sphere trade corporations).

(6) COMPUTATION OF DEDUCTION FOR DIVIDENDS RECEIVED, ETC.—The deductions allowed by sections 243 (relating to dividends received on certain preferred stock of public utilities), and 245 (relating to dividends received from certain foreign corporations) shall be computed without regard to section 246(b) (relating to limitation on aggregate amount of deductions); and the deduction allowed by section 247 (relating to dividends paid on certain preferred stock of public utilities) shall be computed without regard to subsection (a) (1) (B) of such section.

#### SEC. 217. MOVING EXPENSES.

(a) Deduction Allowed.—There shall be allowed as a deduction moving expenses paid or incurred during the taxable year in connection with the commencement of work by the taxpayer as an employee at a new principal place of work.

(b) Definition of Moving Expenses.—

(1) IN GENERAL.—For purposes of this section, the term "moving expenses" means only the reasonable expenses—

(A) of moving household goods and personal effects from

the former residence to the new residence, and

(B) of traveling (including meals and lodging) from the

former residence to the new place of residence.

(2) Individuals other than the taxpayer, expenses referred to in paragraph (1) shall be taken into account only if such individual has both the former residence and the new residence as his principal place of abode and is a member of the taxpayer's household.

(c) Conditions for Allowance.—No deduction shall be allowed

under this section unless-

(1) the taxpayer's new principal place of work—

(A) is at least 20 miles farther from his former.

(A) is at least 20 miles farther from his former residence than was his former principal place of work, or

(B) if he had no former principal place of work, is at least

20 miles from his former residence, and

(2) during the 12-month period immediately following his arrival in the general location of his new principal place of work, the taxpayer is a full-time employee, in such general location, during at least 39 weeks.

(d) Rules for Application of Subsection (c) (2).—

(1) Subsection (c) (2) shall not apply to any item to the extent that the taxpayer receives reimbursement or other expense allow-

ance from his employer for such item.

- (2) If a taxpayer has not satisfied the condition of subsection (c) (2) before the time prescribed by law (including extensions thereof) for filing the return for the taxable year during which he paid or incurred moving expenses which would otherwise be deductible under this section, but may still satisfy such condition, then such expenses may (at the election of the taxpayer) be deducted for such taxable year notwithstanding subsection (c) (2).
  - (A) for any taxable year moving expenses have been deducted in accordance with the rule provided in paragraph (2), and

(B) the condition of subsection (c) (2) is not satisfied by

the close of the subsequent taxable year,

then an amount equal to the expenses which were so deducted shall be included in gross income for such subsequent taxable year.

(e) DISALLOWANCE OF DEDUCTION WITH RESPECT TO REIMBURSE-MENTS NOT INCLUDED IN GROSS INCOME.—No deduction shall be allowed under this section for any item to the extent that the taxpayer receives reimbursement or other expense allowance for such item which is not included in his gross income.

(f) REGULATIONS.—The Secretary or his delegate shall prescribe such regulations as may be necessary to carry out the purposes of this

section.

# SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(a) REQUIREMENTS FOR QUALIFICATIONS.—A trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries shall constitute a qualified trust under this section—

(1) if contributions are made to the trust by such employer, or employees, or both, or by another employer who is entitled to deduct his contributions under section 404(a)(3)(B) (relating to deduction for contributions to profit-sharing and stock bonus plans), for the purpose of distributing to such employees or their beneficiaries the corpus and income of the fund accumulated by the trust in accordance

with such plan;

(2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees or their beneficiaries;

(3) if the trust, or two or more trusts, or the trust or trusts and annuity plan or plans are designated by the employer as constituting parts of a plan intended to qualify under this subsection which

benefits either—

(A) 70 percent or more of all the employees, or 80 percent or more of all the employees who are eligible to benefit under the plan if 70 percent or more of all the employees are eligible to benefit under the plan, excluding in each case employees who have been employed not more than a minimum period prescribed by the plan, not exceeding 5 years, employees whose customary employment is for not more than 20 hours in any one week, and employees whose customary employment is for not more than 5 months in any calendar year, or

(B) such employees as qualify under a classification set up by the employer and found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other employees, or highly compensated employees;

and

(4) if the contributions or benefits provided under the plan do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist in supervising the work of other

employees, or highly compensated employees.

(5) A classification shall not be considered discriminatory within the meaning of paragraph (3) (B) or (4) merely because it excludes employees the whole of whose remuneration constitutes "wages" under section 3121(a)(1) (relating to the Federal Insurance Contributions Act) or merely because it is limited to salaried or clerical employees. Neither shall a plan be considered discriminatory within the meaning of such provisions merely because the contributions or benefits of or on behalf of the employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such employees, or merely because the contributions or benefits based on that part of an employee's remuneration which is excluded from "wages" by section 3121(a) (1) differ from the contributions or benefits based on employee's remuneration not so excluded, or differ because of any retirement benefits created under State or Federal law. For purposes of this paragraph and paragraph (10), the total compensation of an individual who is an employee within the meaning of subsection (c) (1) means such individual's earned income (as defined in subsection (c) (2)), and the basic or regular rate of compensation of such an individual shall be determined, under regulations prescribed by the Secretary or his delegate, with respect to that portion of his earned income which bears the same ratio to his earned income as the basic or regular compensation of the employees under the plan bears to the total compensation of such employees.

(6) A plan shall be considered as meeting the requirements of paragraph (3) during the whole of any taxable year of the plan if

on one day in each quarter it satisfied such requirements.

(7) A trust shall not constitute a qualified trust under this section unless the plan of which such trust is a part provides that, upon its termination or upon complete discontinuance of contributions under the plan, the rights of all employees to benefits accrued to the date of

such termination or discontinuance, to the extent then funded, or the amounts credited to the employees' accounts are nonforfeitable. This paragraph shall not apply to benefits or contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by paragraph (4), may not be used for designated employees in the event of early termination of the plan.

(8) A trust forming part of a pension plan shall not constitute a qualified trust under this section unless the plan provides that forfeitures must not be applied to increase the benefits any employee

would otherwise receive under the plan.

(9) In the case of a plan which provides contributions or benefits for employees some or all of whom are employees within the meaning of subsection (c)(1), a trust forming part of such plan shall not constitute a qualified trust under this section unless, under the plan, the entire interest of each employee—

(A) either will be distributed to him not later than his taxable year in which he attains the age of 70½ years, or, in the case of an employee other than an owner-employee (as defined in subsection

(c) (3), in which he retires, whichever is the later, or

(B) will be distributed, commencing not later than such taxable year, (i) in accordance with regulations prescribed by the Secretary or his delegate, over the life of such employee or over the lives of such employee and his spouse, or (ii) in accordance with such regulations, over a period not extending beyond the life expectancy of such employee or the life expectancy of such employee and his spouse.

A trust shall not be disqualified under this paragraph by reason of distributions under a designation, prior to the date of the enactment of this paragraph, by any employee under the plan of which such trust is a part, of a method of distribution which does not meet the

terms of the preceding sentence.

(10) In the case of a plan which provides contributions or benefits for employees some or all of whom are owner-employees (as defined in subsection (c)(3))—

(A) paragraph (3) and the first and second sentences of para-

graph (5) shall not apply, but—

(i) such plan shall not be considered discriminatory within the meaning of paragraph (4) merely because the contributions or benefits of or on behalf of employees under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of such em-

ployees, and

(ii) such plan shall not be considered discriminatory within the meaning of paragraph (4) solely because under the plan contributions described in subsection (e)(3)(A) which are in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a)(10)) for the taxable year may be made on behalf of any owner-employee; and

(B) a trust forming a part of such plan shall constitute a qualified trust under this section only if the requirements in subsection

(d) are also met.

(b) CERTAIN RETROACTIVE CHANGES IN PLAN.—A stock bonus, pension, profit-sharing, or annuity plan shall be considered as satisfying the requirements of paragraphs (3), (4), (5), and (6) of subsection (a) for the period beginning with the date on which it was put into effect and ending with the 15th day of the third month following the close of the taxable year of the employer in which the plan was put in effect, if all provisions of the plan which are necessary to satisfy such requirements are in effect by the end of such period and have been made effective for all purposes with respect to the whole of such period.

(c) Definitions and Rules Relating to Self-Employed Individ-

UALS AND OWNER-EMPLOYEES.—For purposes of this section—
(1) Employee.—The term "employee" includes, for any taxable year, an individual who has earned income (as defined in paragraph (2)) for the taxable year. To the extent provided in regulations prescribed by the Secretary or his delegate, such term also includes, for any taxable year-

> (A) an individual who would be an employee within the meaning of the preceding sentence but for the fact that the trade or business carried on by such individual did not have

net profits for the taxable year, and

(B) an individual who has been an employee within the meaning of the preceding sentence for any prior taxable year.

(2) Earned income.—

(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)), but such net earnings shall be determined—

(i) only with respect to a trade or business in which personal services of the taxpayer are a material incomeproducing factor.

(ii) without regard to paragraphs (4) and (5) of

section 1402(c),

(iii) in the case of any individual who is treated as an employee under section 3121(d) (3) (A), (C), or (D), without regard to paragraph (2) of section 1402 (c), and

(iv) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against

such items.

For purposes of this subparagraph, section 1402, as in effect for a taxable year ending on December 31, 1962, shall be treated as having been in effect for all taxable years ending before such date.1

(3) Owner-employee.—The term "owner-employee" means an

employee who-

(A) owns the entire interest in an unincorporated trade or

business, or

(B) in the case of a partnership, is a partner who owns more than 10 percent of either the capital interest or the profits interest in such partnership.

¹P.L. 89-809, sec. 204(c), enacted November 13, 1966, inserted subparagraph (A) in lieu of former subparagraphs (A) and (B). For subparagraphs (A) and (B) as they read prior to their deletion, see pp. 474 and 475.

To the extent provided in regulations prescribed by the Secretary or his delegate, such term also means an individual who has been an owner-employee within the meaning of the preceding sentence.

(4) Employer.—An individual who owns the entire interest in an unincorporated trade or business shall be treated as his own employer. A partnership shall be treated as the employer of each partner who is an employee within the meaning of paragraph (1).

(5) Contributions on Behalf of owner-employees.—The term "contribution on behalf of an owner-employee" includes, except as the context otherwise requires, a contribution under a plan—

(A) by the employer for an owner-employee, and

(B) by an owner-employee as an employee.

(d) Additional Requirements for Qualification of Trust and Plans Benefiting Owner-Employees.—A trust forming part of a pension or profit-sharing plan which provides contributions or benefits for employees some or all of whom are owner-employees shall constitute a qualified trust under this section only if, in addition to meeting the requirements of subsection (a), the following requirements of this subsection are met by the trust and by the plan of which such trust is

a part:

(1) In the case of a trust which is created on or after the date of the enactment of this subsection, or which was created before such date but is not exempt from tax under section 501(a) as an organization described in subsection (a) on the day before such date, the trustee is a bank, but a person (including the employer) other than a bank may be granted, under the trust instrument, the power to control the investment of the trust funds either by directing investments (including reinvestments, disposals, and exchanges) or by disapproving proposed investments (including reinvestments, disposals, and exchanges). This paragraph shall not apply to a trust created or organized outside the United States before the date of the enactment of this subsection if, under section 402(c), it is treated as exempt from tax under section 501(a) on the day before such date; or, to the extent provided under regulations prescribed by the Secretary or his delegate, to a trust which uses annuity, endowment, or life insurance contracts of a life insurance company exclusively to fund the benefits prescribed by the trust, if the life insurance company supplies annually such information about trust transactions affecting owner-employees as the Secretary or his delegate shall by forms or regulations prescribe. For purposes of this paragraph, the term "bank" means a bank as defined in section 581, a corporation which under the laws of the State of its incorporation is subject to supervision and examination by the commissioner of banking or other officer of such State in charge of the administration of the banking laws of such State, and, in the case of a trust created or organized outside the United States, a bank or trust company, wherever incorporated, exercising fiduciary powers and subject to supervision and examination by governmental authority.

(2) Under the plan—
(A) the employees' rights to or derived from the contributions under the plan are nonforfeitable at the time the contributions are paid to or under the plan; and

(B) in the case of a profit-sharing plan, there is a definite formula for determining the contributions to be made by the employer on behalf of employees (other than owner-em-

ployees).

Subparagraph (A) shall not apply to contributions which, under provisions of the plan adopted pursuant to regulations prescribed by the Secretary or his delegate to preclude the discrimination prohibited by subsection (a)(4), may not be used to provide benefits for designated employees in the event of early termination of the plan.

(3) The plan benefits each employee having a period of employment of 3 years or more. For purposes of the preceding sentence, the term "employee" does not include any employee whose customary employment is for not more than 20 hours in any one week or

is for not more than 5 months in any calendar year.

(4) Under the plan—

(A) contributions or benefits are not provided for any owner-employee unless such owner-employee has consented to

being included under the plan; and

(B) no benefits may be paid to any owner-employee, except in the case of his becoming disabled (within the meaning of section 72(m)(7)), prior to his attaining the age of 59½ years.

(5) The plan does not permit—

(A) contributions to be made by the employer on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 (determined without regard to

section 404(a)(10)) for the taxable year;

(B) in the case of a plan which provides contributions or benefits only for owner-employees, contributions to be made on behalf of any owner-employee in excess of the amounts which may be deducted under section 404 (determined without regard to section 404(a)(10)) for the taxable year; and

(C) if a distribution under the plan is made to any employee and if any portion of such distribution is an amount described in section 72(m)(5)(A)(i), contributions to be made on behalf of such employee for the 5 taxable years succeeding the taxable year in which such distribution is made.

Subparagraphs (A) and (B) shall not apply to any contribution which is not considered to be an excess contribution (as defined in subsection (e) (1)) by reason of the application of subsection (e)

(3).

(6) Except as provided in this paragraph, the plan meets the requirements of subsection (a) (4) without taking into account for any purpose contributions or benefits under chapter 2 (relating to tax on self-employment income), chapter 21 (relating to Federal Insurance Contributions Act), title II of the Social Security Act, as amended, or any other Federal or State law. If—

(A) of the contributions deductible under section 404 (determined without regard to section 404(a) (10)), not more than one-third is deductible by reason of contributions by the

employer on behalf of owner-employees, and

(B) taxes paid by the owner-employees under chapter 2 (relating to tax on self-employment income), and the taxes which would be payable under such chapter 2 by the owner-employees but for paragraphs (4) and (5) of section 1402(c), are taken into account as contributions by the employer on behalf of such owner-employees,

then taxes paid under section 3111 (relating to tax on employers) with respect to an employee may, for purposes of subsection (a) (4), be taken into account as contributions by the employer for

such employee under the plan.

(7) Under the plan, if an owner-employee dies before his entire interest has been distributed to him, or if distribution has been commenced in accordance with subsection (a) (9) (B) to his surviving spouse and such surviving spouse dies before his entire interest has been distributed to such surviving spouse, his entire interest, (or the remaining part of such interest if distribution thereof has commenced) will, within 5 years after his death (or the death of his surviving spouse), be distributed, or applied to the purchase of an immediate annuity for his beneficiary or beneficiaries (or the beneficiary or beneficiaries of his surviving spouse) which will be payable for the life of such beneficiary or beneficiaries (or for a term certain not extending beyond the life expectancy of such beneficiary or beneficiaries) and which will be immediately distributed to such beneficiary or beneficiaries. The preceding sentence shall not apply if distribution of the interest of an owner-employee has commenced and such distribution is for a term certain over a period permitted under subsection (a) (9) (B) (ii).

(8) Under the plan—

(A) any contribution which is an excess contribution, together with the income attributable to such excess contribution, is (unless subsection (e)(2)(E) applies) to be repaid to the owner-employee on whose behalf such excess contribution is made;

(B) if for any taxable year the plan does not, by reason of subsection (e) (2) (A), meet (for purposes of section 404) the requirements of this subsection with respect to an owner-employee, the income for the taxable year attributable to the interest of such owner-employee under the plan is to be paid

to such owner-employee; and

(C) the entire interest of an owner-employee is to be repaid to him when required by the provisions of subsection

(e)(2)(E).

(9) (A) If the plan provides contributions or benefits for an owner-employee who controls, or for two or more owner-employees who together control, the trade or business with respect to which the plan is established, and who also control as an owner-employee or as owner-employees one or more other trades or businesses, such plan and the plans established with respect to such other trades or businesses, when coalesced, constitute a single plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection with respect to the employees of all such trades or businesses (including the trade

or business with respect to which the plan intended to qualify

under this section is established).

(B) For purposes of subparagraph (A), an owner-employee, or two or more owner-employees, shall be considered to control a trade or business if such owner-employee, or such two or more owner-employees together—

(i) own the entire interest in an unincorporated trade or

business, or

(ii) in the case of a partnership, own more than 50 percent of either the capital interest or the profits interest in such

partnership.

For purposes of the preceding sentence, an owner-employee, or two or more owner-employees, shall be treated as owning any interest in a partnership which is owned, directly or indirectly, by a partnership which such owner-employee, or such two or more owner-employees, are considered to control within the mean-

ing of the preceding sentence.

(10) The plan does not provide contributions or benefits for any owner-employee who controls (within the meaning of paragraph (9)(B)), or for two or more owner-employees who together control, as an owner-employee or as owner-employees, any other trade or business, unless the employees of each trade or business which such owner-employee or such owner-employees control are included under a plan which meets the requirements of subsection (a) (including paragraph (10) thereof) and of this subsection, and provides contributions and benefits for employees which are not less favorable than contributions and benefits provided for owner-employees under the plan.

(11) Under the plan, contributions on behalf of any owneremployee may be made only with respect to the earned income of such owner-employee which is derived from the trade or busi-

ness with respect to which such plan is established.

(e) Excess Contributions on Behalf of Owner-Employees.—
(1) Excess contribution defined.—For purposes of this section, the term "excess contribution" means, except as provided in

paragraph (3)—

(A) if, in the taxable year, contributions are made under the plan only on behalf of owner-employees, the amount of any contribution made on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 (determined without regard to section 404 (a) (10)) for the taxable year; or

(B) if, in the taxable year, contributions are made under the plan on behalf of employees other than owner-employees—

(i) the amount of any contribution made by the employer on behalf of any owner-employee which (without regard to this subsection) is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year;

(ii) the amount of any contribution made by any owner-employee (as an employee) at a rate which exceeds the rate of contributions permitted to be made by em-

ployees other than owner-employees;

(iii) the amount of any contribution made by any owner-employee (as an employee) which exceeds the lesser of \$2,500 or 10 percent of the earned income for such taxable year derived by such owner-employee from the trade or business with respect to which the plan is established; and

(iv) in the case of any individual on whose behalf contributions are made under more than one plan as an owner-employee, the amount of any contribution made by such owner-employee (as an employee) under all such

plans which exceeds \$2,500; and

(C) the amount of any contribution made on behalf of an owner-employee in any taxable year for which, under paragraph (2) (A) or (E), the plan does not (for purposes of section 404) meet the requirements of subsection (d) with respect to such owner-employee.

For purposes of this subsection, the amount of any contribution which is allocable (determined in accordance with regulations prescribed by the Secretary or his delegate) to the purchase of life, accident, health, or other insurance shall not be taken into account.

(2) Effect of excess contribution.—

(A) In general.—If an excess contribution (other than an excess contribution to which subparagraph (E) applies) is made on behalf of an owner-employee in any taxable year, the plan with respect to which such excess contribution is made shall, except as provided in subparagraphs (C) and (D), be considered, for purposes of section 404, as not meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year and for all succeeding taxable years.

(B) Inclusion of amounts in gross income of owneremployees.—For any taxable year for which any plan does not meet the requirements of subsection (d) with respect to an owner-employee by reason of subparagraph (A), the gross income of such owner-employee shall, for purposes of this chapter, include the amount of net income for such taxable year attributable to the interest of such owner-employee un-

der such plan.

(C) Repayment within prescribed period.—Subparagraph (A) shall not apply to an excess contribution with respect to any taxable year, if, on or before the close of the 6-month period beginning on the day on which the Secretary or his delegate sends notice (by certified or registered mail) to the person to whom such excess contribution was paid of the amount of such excess contribution, and the net income attributable thereto is repaid to the owner-employee on whose behalf such excess contribution was made. If the excess contribution is an excess contribution as defined in paragraph (1) (A) or (B) (i), or is an excess contribution as defined in paragraph (1) (C) with respect to which a deduction has been claimed under section 404, the notice required by the preceding sentence shall not be mailed prior to the time that the amount of the tax

under this chapter of such owner-employee for the taxable year in which such excess contribution was made has been

finally determined.

(D) Repayment after prescribed period.—If an excess contribution, together with the net income attributable thereto, is not repaid within the 6-month period referred to in subparagraph (C), subparagraph (A) shall not apply to an excess contribution with respect to any taxable year beginning with the taxable year in which the person to whom such excess contribution was paid repays the amount of such excess contribution to the owner-employee on whose behalf such excess contribution was made, and pays to such owner-employee the amount of net income attributable to the interest of such owner-employee which, under subparagraph (B), has been included in the gross income of such owner-employee for any prior taxable year.

(E) Special rule if excess contribution was willfully made.—If an excess contribution made on behalf of an owner-employee is determined to have been willfully made,

then-

(i) subparagraphs (A), (B), (C), and (D) shall not

apply with respect to such excess contribution;

(ii) there shall be distributed to the owner-employee on whose behalf such excess contribution was willfully made his entire interest in all plans with respects to

which he is an owner-employee; and

(iii) no plan shall, for purposes of section 404, be considered as meeting the requirements of subsection (d) with respect to such owner-employee for the taxable year in which it is determined that such excess contribution was willfully made and for the 5 taxable years following such taxable year.

(F) STATUTE OF LIMITATIONS.—In any case in which subparagraph (A) applies, the period for assessing any de-

ficiency arising by reason of—

(i) the disallowance of any deduction under section 404 on account of a plan not meeting the requirements of subsection (d) with respect to the owner-employee on whose behalf an excess contribution was made, or

(ii) the inclusion, under subparagraph (B), in gross income of such owner-employee of income attributable to the interest of such owner-employee under a plan,

for the taxable year in which such excess contribution was made or for any succeeding taxable year shall not expire prior to one year after the close of the 6-month period referred to in subparagraph (C).

(3) CONTRIBUTIONS FOR PREMIUMS ON ANNUITY, ETC., CONTRACTS.—A contribution by the employer on behalf of an owner-employee shall not be considered to be an excess contribution

within the meaning of paragraph (1), if-

(A) under the plan such contribution is required to be applied (directly or through a trustee) to pay premiums or other consideration for one or more annuity, endowment, or

life insurance contracts on the life of such owner-employee

issued under the plan,

(B) the amount of such contribution exceeds the amount deductible under section 404 (determined without regard to section 404(a)(10)) with respect to contributions made by the employer on behalf of such owner-employee under the

plan, and

(C) the amount of such contribution does not exceed the average of the amounts which were deductible under section 404 (determined without regard to section 404(a)(10)) with respect to contributions made by the employer on behalf of such owner-employee under the plan (or which would have been deductible under such section if such section had been in effect) for the first 3 taxable years (i) preceding the year in which the last such annuity, endowment, or life insurance contract was issued under the plan and (ii) in which such owner-employee derived earned income from the trade or business with respect to which the plan is established, or for so many of such taxable years as such owner-employee was engaged in such trade or business and derived earned income therefrom.

In the case of any individual on whose behalf contributions described in subparagraph (A) are made under more than one plan as an owner-employee during any taxable year, the preceding sentence shall not apply if the amount of such contributions under all such plans for such taxable year exceeds \$2,500. Any contribution which is not considered to be an excess contribution by reason of the application of this paragraph shall, for purposes of subparagraphs (B) (ii), (iii), and (iv) of paragraph (1), be taken into account as a contribution made by such owner-employee as an employee to the extent that the amount of such contribution is not deductible under section 404 (determined without regard to section 404(a)(10)) for the taxable year, but only for the purpose of applying such subparagraphs to other contributions made by such owner-employee as an employee.

(f) CERTAIN CUSTODIAL ACCOUNTS.—

(1) TREATMENT AS QUALIFIED TRUST.—For purposes of this title, a custodial account shall be treated as a qualified trust under this section, if—

(A) such custodial account would, except for the fact that it is not a trust, constitute a qualified trust under this section;

(B) the custodian is a bank (as defined in subsection (d)(1)):

(C) the investment of the funds in such account (includ-

ing all earnings) is to be made—

(i) solely in regulated investment company stock with respect to which an employee is the beneficial owner, or (ii) solely in annuity, endowment, or life insurance

contracts issued by an insurance company;

(D) the shareholder of record of any such stock described in subparagraph (C)(i) is the custodian or its nominee; and (E) the contracts described in subparagraph (C)(ii) are

held by the custodian until distributed under the plan.

For purposes of this title, in the case of a custodial account treated as a qualified trust under this section by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

(2) Definition.—For purposes of paragraph (1), the term "regulated investment company" means a domestic corporation

which-

(A) is a regulated investment company within the meaning of section 851(a), and

(B) issues only redeemable stock.

(g) Annuity Defined.—For purposes of this section and sections 402, 403, and 404, the term "annuity" includes a face-amount certificate, as defined in section 2(a) (15) of the Investment Company Act of 1940 (15 U.S.C., sec. 80a-2); but does not include any contract or certificate issued after December 31, 1962, which is transferrable, if any person other than the trustee of a trust described in section 401(a) which is exempt from tax under section 501(a) is the owner of such contract or certificate.

(h) Medical, etc., Benefits for Retired Employees and Their Spouses and Dependents.—Under regulations prescribed by the Secretary or his delegate, a pension or annuity plan may provide for the payment of benefits for sickness, accident, hospitalization, and medical expenses of retired employees, their spouses and their dependents, but

only if-

(1) such benefits are subordinate to the retirement benefits

provided by the plan,

(2) a separate account is established and maintained for such benefits,

(3) the employer's contributions to such separate account are

reasonable and ascertainable,

(4) it is impossible, at any time prior to the satisfaction of all liabilities under the plan to provide such benefits, for any part of the corpus or income of such separate account to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of such benefits, and

(5) notwithstanding the provisions of subsection (a) (2), upon the satisfaction of all liabilities under the plan to provide such benefits, any amount remaining in such separate account must, under the terms of the plan, be returned to the employer.

(i) Certain Union-Negotiated Multiemployer Pension Plans.—In the case of a trust forming part of a pension plan which has been determined by the Secretary or his delegate to constitute a qualified trust under subsection (a) and to be exempt from taxation under section 501(a) for a period beginning after contributions were first made to or for such trust, if it is shown to the satisfaction of the Secretary or his delegate that—

(1) such trust was created pursuant to a collective bargaining agreement between employee representatives and two or more employers who are not related (determined under regulations

prescribed by the Secretary or his delegate),

(2) any disbursements of contributions, made to or for such trust before the time as of which the Secretary or his delegate

determined that the trust constituted a qualified trust, substantially complied with the terms of the trust, and the plan of which

the trust is apart, as subsequently qualified, and

(3) before the time as of which the Secretary or his delegate determined that the trust constitutes a qualified trust, the contributions to or for such trust were not used in a manner which would jeopardize the interests of its beneficiaries,

then such trust shall be considered as having constituted a qualified trust under subsection (a) and as having been exempt from taxation under section 501(a) for the period beginning on the date on which contributions were first made to or for such trust and ending on the date such trust first constituted (without regard to this subsection) a qualified trust under subsection (a).

(i) Cross Reference.—

For exemption from tax of a trust qualified under this section, see section 501(a).

#### SEC. 403. TAXATION OF EMPLOYEE ANNUITIES.

(a) Taxability of Beneficiary Under a Qualified Annuity PLAN.

(1) General Rule.—Except as provided in paragraph (2), if an annuity contract is purchased by an employer for an employee under a plan which meets the requirements of section 404(a) (2) (whether or not the employer deducts the amounts paid for the contract under such section), the employee shall include in his gross income the amounts received under such contract for the year received as provided in section 72 (relating to annuities).

(2) Capital gains treatment for certain distributions.—

(A) GENERAL RULE.—If—

(i) an annuity contract is purchased by an employer for an employee under a plan described in paragraph (1);

(ii) such plan requires that refunds of contributions with respect to annuity contracts purchased under such plan be used to reduce subsequent premiums on the con-

tracts under the plan; and

(iii) the total amounts payable by reason of an employee's death or other separation from the service, or by reason of the death of an employee after the employee's separation from the service, are paid to the

payee within one taxable year of the payee,

then the amount of such payments, to the extent exceeding the amount contributed by the employee (determined by applying section 72(f)), which employee contributions shall be reduced by any amounts theretofore paid to him which were not includible in gross income, shall be considered a gain from the sale or exchange of a capital asset held for more than 6 months. This subparagraph shall not apply to amounts paid to any payee to the extent such amounts are attributable to contributions made on behalf of the employee while he was an employee within the meaning of section 401(c)(1).

(B) DEFINITION.—For purposes of subparagraph (A), the term "total amounts" means the balance to the credit of an employee which becomes payable to the payee by reason of the employee's death or other separation from the service, or by reason of his death after separation from the service.

(3) Self-employed individuals.—For purposes of this subsection, the term "employee" includes an individual who is an employee within the meaning of section 401(c)(1), and the employer of such individual is the person treated as his employer

under section 401(c)(4).

#### SEC. 405. QUALIFIED BOND PURCHASE PLANS.

(a) REQUIREMENTS FOR QUALIFICATION.—A plan of an employer for the purchase for and distribution to his employees or their beneficiaries of United States bonds described in subsection (b) shall constitute a qualified bond purchase plan under this section if—

(1) the plan meets the requirements of section 401(a) (3), (4), (5), (6), (7), and (8) and, if applicable, the requirements of section 401(a) (9) and (10) and of section 401(d) (other than

paragraphs (1), (5) (B), and (8)); and

(2) contributions under the plan are used solely to purchase for employees or their beneficiaries United States bonds described in subsection (b).

#### SEC. 406. CERTAIN EMPLOYEES OF FOREIGN SUBSIDIARIES.

(a) TREATMENT AS EMPLOYEES OF DOMESTIC CORPORATION.—For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 405(a), or a bond purchase plan described in section 405(a), of a domestic corporation, an individual who is a citizen of the United States and who is an employee of a foreign subsidiary (as defined in section 3121(1)(8)) of such domestic corporation shall be treated as an employee of such domestic corporation, if—

(1) such domestic corporation has entered into an agreement under section 3121(1) which applies to the foreign subsidiary

of which such individual is an employee;

(2) the plan of such domestic corporation expressly provides for contributions or benefits for individuals who are citizens of the United States and who are employees of its foreign subsidiaries to which an agreement entered into by such domestic corporation under section 3121(1) applies; and

(3) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) are not provided by any other person with respect to the remuneration paid to such individual by the foreign sub-

sidiary.

(b) Special Rules for Application of Section 401 (a).—

(1) Nondiscrmination requirements.—For purposes of applying paragraphs (3) (B) and (4) of section 401(a) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employes of a foreign subsidiary of such domestic corporation, he shall be treated as having such capacity with

respect to such domestic corporations; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic corporation and by determining such individual's status with regard to such domestic corporation.

(2) Determination of compensation.—For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic corporation under

subsection (a)—

(A) the total compensation of such individual shall be the remuneration paid to such individual by the foreign subsidiary which would constitute his total compensation if his services had been performed for such domestic corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary or his delegate; and

(B) such individual shall be treated as having paid the amount paid by such domestic corporation which is equiv-

alent to the tax imposed by section 3101.

(c) TERMINATION OF STATUS AS DEEMED EMPLOYEE NOT TO BE TREATED AS SEPARATION FROM SERVICE FOR PURPOSES OF CAPITAL GAIN PROVISIONS.—For purposes of applying section 402(a)(2) and section 403(a)(2) with respect to an individual who is treated as an employee of a domestic corporation under subsection (a), such individual shall not be considered as separated from the service of such domestic corporation solely by reason of the fact that—

(1) the agreement entered into by such domestic corporation under section 3121(1) which covers the employment of such individual is terminated under the provisions of such section,

(2) such individual becomes an employee of a foreign subsidiary with respect to which such agreement does not apply,

(3) such individual ceases to be an employee of the foreign subsidiary by reason of which he is treated as an employee of such domestic corporation, if he becomes an employee of another corporation controlled by such domestic corporation, or

(4) the provision of the plan described in subsection (a) (2)

is terminated.

(d) Deductibility of Contributions.—For purposes of applying sections 404 and 405(c) with respect to contributions made to or under a pension, profit-sharing, stock bonus, annuity, or bond purchase plan by a domestic corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic corporation or to any other corporation which is entitled to deduct its contributions under such

sections,

(2) there shall be allowed as a deduction to the foreign subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deducti-ble under section 404 (or section 405(c)) by the domestic corporation if he were an employee of the domestic corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (deter-

mined with the application of subsection (b) (2)).

Any amount deductible by a foreign subsidiary under this subsection shall be deductible for its taxable year with or within which the taxable year of such domestic corporation ends.

(e) Treatment as Employee Under Related Provisions.—An individual who is treated as an employee of a domestic corporation under subsection (a) shall also be treated as an employee of such domestic corporation, with respect to the plan described in subsection (a) (2), for purposes of applying the following provisions of this title:

(1) Section 72 (d) (relating to employees' annuities).
(2) Section 72 (f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).
(5) Section 2517 (relating to certain annuities under qualified plans).

#### SEC. 407. CERTAIN EMPLOYEES OF DOMESTIC SUBSIDIARIES GAGED IN BUSINESS OUTSIDE THE UNITED STATES.

(a) Treatment as Employees of Domestic Parent Corporation.— (1) In general.—For purposes of applying this part with respect to a pension, profit-sharing, or stock bonus plan described in section 401(a), an annuity plan described in section 403(a), or a bond purchase plan described in section 405(a), of a domestic parent corporation, an individual who is a citizen of the United States and who is an employee of a domestic subsidiary (within the meaning of paragraph (2)) of such domestic parent corporation shall be treated as an employee of such domestic parent

(A) the plan of such domestic parent corporation expressly provides for contributions or benefits for individuals who are citizens of the United States and who are employees

of its domestic subsidiaries; and

corporation, if-

(B) contributions under a funded plan of deferred compensation (whether or not a plan described in section 401(a), 403(a), or 405(a)) are not provided by any other person with respect to the remuneration paid to such individual by the domestic subsidiary.

(2) Definitions.—For purposes of this section—

(A) Domestic subsidiary.—A corporation shall be treated as a domestic subsidiary for any taxable year only if-

(i) such corporation is a domestic corporation 80 percent or more of the outstanding voting stock of which is owned by another domestic corporation;

(ii) 95 percent or more of its gross income for the three-year period immediately preceding the close of its taxable year which ends on or before the close of the taxable year of such other domestic corporation (or for such part of such period during which the corporation was in existence) was derived from sources without the United States; and

(iii) 90 percent or more of its gross income for such period (or such part) was derived from the active con-

duct of a trade or business.

If for the period (or part thereof) referred to in clauses (ii) and (iii) such corporation has no gross income, the provisions of clauses (ii) and (iii) shall be treated as satisfied if it is reasonable to anticipate that, with respect to the first taxable year thereafter for which such corporation has gross income, the provisions of such clauses will be satisfied.

(B) Domestic parent corporation.—The domestic parent corporation of any domestic subsidiary is the domestic corporation which owns 80 percent or more of the outstanding

voting stock of such domestic subsidiary.

(b) Special Rules for Application of Section 401(a).—

(1) Nondiscrimination requirements.—For purposes of applying paragraphs (3)(B) and (4) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a)—

(A) if such individual is an officer, shareholder, or person whose principal duties consist in supervising the work of other employees of a domestic subsidiary, he shall be treated as having such capacity with respect to such

domestic parent corporation; and

(B) the determination of whether such individual is a highly compensated employee shall be made by treating such individual's total compensation (determined with the application of paragraph (2) of this subsection) as compensation paid by such domestic parent corporation and by determining such individual's status with regard to such

domestic parent corporation.

(2) Determination of compensation.—For purposes of applying paragraph (5) of section 401(a) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), the total compensation of such individual shall be the remuneration paid to such individual by the domestic subsidiary which would constitute his total compensation if his services had been performed for such domestic parent corporation, and the basic or regular rate of compensation of such individual shall be determined under regulations prescribed by the Secretary or his delegate.

(c) Termination of Status as Deemed Employee Not To Be Treated as Separation From Service for Purposes of Capital Gain Provisions.—For purposes of applying section 402(a) (2) and section 403(a) (2) with respect to an individual who is treated as an employee of a domestic parent corporation under subsection (a), such individual shall not be considered as separated from the service of such domestic

parent corporation solely by reason of the fact that—

(1) the corporation of which such individual is an employee ceases, for any taxable year, to be a domestic subsidiary within the

meaning of subsection (a) (2) (A),
(2) such individual ceases to be an employee of a domestic subsidiary of such domestic parent corporation, if he becomes an employee of another corporation controlled by such domestic parent corporation, or

(3) the provision of the plan described in subsection (a) (1)

(A) is terminated.

(d) DEDUCTIBILITY OF CONTRIBUTIONS.—For purposes of applying sections 404 and 405(c) with respect to contributions made to or under a pension, profit-sharing, stock bonus, annuity, or bond purchase plan by a domestic parent corporation, or by another corporation which is entitled to deduct its contributions under section 404(a)(3)(B), on behalf of an individual who is treated as an employee of such domestic corporation under subsection (a)—

(1) except as provided in paragraph (2), no deduction shall be allowed to such domestic parent corporation or to any other corporation which is entitled to deduct its contributions under

such sections,

(2) there shall be allowed as a deduction to the domestic subsidiary of which such individual is an employee an amount equal to the amount which (but for paragraph (1)) would be deductible under section 404 (or section 405(c)) by the domestic parent corporation if he were an employee of the domestic parent corporation, and

(3) any reference to compensation shall be considered to be a reference to the total compensation of such individual (deter-

mined with the application of subsection (b) (2)).

Any amount deductible by a domestic subsidiary under this subsection shall be deductible for its taxable year with or within which the tax-

able year of such domestic parent corporation ends.

(e) Treatment as Employee Under Related Provisions.—An individual who is treated as an employee of a domestic parent corporation under subsection (a) shall also be treated as an employee of such domestic parent corporation, with respect to the plan described in subsection (a) (1) (A), for purposes of applying the following provisions of this title:

(1) Section 72(d) (relating to employees' annuities).

(2) Section 72(f) (relating to special rules for computing employees' contributions).

(3) Section 101(b) (relating to employees' death benefits).

(4) Section 2039 (relating to annuities).

(5) Section 2517 (relating to certain annuities under qualified plans).

## SEC. 441. PERIOD FOR COMPUTATION OF TAXABLE INCOME.

(b) Taxable Year.—For purposes of this subtitle, the term "taxable year" means-

(1) the taxpayer's annual accounting period, if it is a calendar

year or a fiscal year;

(2) the calendar year, if subsection (g) applies; or

(3) the period for which the return is made, if a return is made

for a period of less than 12 months.

(c) Annual Accounting Period.—For purposes of this subtitle, the term "annual accounting period" means the annual period on the basis of which the taxpayer regularly computes his income in keeping his books.

(d) CALENDAR YEAR.—For purposes of this subtitle, the term "cal-

endar year" means a period of 12 months ending on December 31.

(e) Fiscal Year.—For purposes of this subtitle, the term "fiscal year" means a period of 12 months ending on the last day of any month other than December. In the case of any taxpayer who has made the election provided by subsection (f), the term means the annual period (varying from 52 to 53 weeks) so elected.

(f) Election of Year Consisting of 52–53 Weeks.—

(1) General rule.—A taxpayer who, in keeping his books, regularly computes his income on the basis of an annual period which varies from 52 to 53 weeks and ends always on the same day of the week and ends always—

(A) on whatever date such same day of the week last

occurs in a calendar month, or

(B) on whatever date such same day of the week falls

which is nearest to the last day of a calendar month,

may (in accordance with the regulations prescribed under paragraph (3)) elect to compute his taxable income for purposes of this subtitle on the basis of such annual period. This paragraph shall apply to taxable years ending after the date of the enactment of this title.

### SEC. 451. GENERAL RULE FOR TAXABLE YEAR OF INCLUSION.

(a) GENERAL RULE.—The amount of any item of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under the method of accounting used in computing taxable income, such amount is to be properly accounted for as of a different period.

(b) Special Rule in Case of Death.—In the case of the death of a taxpayer whose taxable income is computed under an accrual method of accounting, any amount accrued only by reason of the death of the taxpayer shall not be included in computing taxable income for the period in which falls the date of the taxpayer's death.

(c) SPECIAL RULE FOR EMPLOYEE TIPS.—For purposes of subsection (a), tips included in a written statement furnished an employer by an employee pursuant to section 6053(a) shall be deemed to be received at the time the written statement including such tips is furnished to the employer.

SEC. 501. EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS,

(a) Exemption From Taxation.—An organization described in subsection (c) or (d) or section 401 (a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502, 503, or 504.

(b) Tax on Unrelated Business Income.—An organization exempt from taxation under subsection (a) shall be subject to tax to the extent provided in part II of this subchapter (relating to tax on unrelated income), but, notwithstanding part II, shall be considered an organization exempt from income taxes for the purpose of any law which refers to organizations exempt from income taxes.

(c) List of Exempt Organizations.—The following organizations

are referred to in subsection (a):

(1) Corporations organized under Act of Congress, if such corporations are instrumentalities of the United States and if, under such Act, as amended and supplemented, such corporations are exempt from Federal income taxes.

(2) Corporations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization

which itself is exempt under this section.

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

(4) Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.

(5) Labor, agricultural, or horticultural organizations.

(6) Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues (whether or not administering a pension fund for football players)², not organized for profit and no part or the net earnings of which inures to the benefit of any private shareholder or individual.

(7) Clubs organized and operated exclusively for pleasure,

(7) Clubs organized and operated exclusively for pleasure, recreation, and other nonprofitable purposes, no part of the net earnings of which inures to the benefit of any private shareholder.

(8) Fraternal beneficiary societies, orders, or associations—
(A) operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and

the lodge system, and

(B) providing for the payment of life, sick, accident, or other benefits to the members of such society, order, or association or their dependents.

⁹P.L. 89-800, sec. 6(a), inserted "boards of trade, or professional football leagues (whether or not administering a pension fund for football players)" in lieu of "or boards of trade", applicable to taxable years ending after November 8, 1966.

(9) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents, if—

(A) no part of their net earnings inures (other than through such payments) to the benefit of any private share-

holder or individual, and

(B) 85 percent or more of the income consists of amounts collected from members and amounts contributed to the association by the employer of the members for the sole purpose of making such payments and meeting expenses.

(10) Voluntary employees' beneficiary associations providing for the payment of life, sick, accident, or other benefits to the members of such association or their dependents or their desig-

nated beneficiaries, if-

(A) admission to membership in such association is limited to individuals who are officers or employees of the United

States Government, and

(B) no part of the net earnings of such association inures (other than through such payments) to the benefit of any private shareholder or individual.

(11) Teachers' retirement fund associations of a purely local

character, if-

(A) no part of their net earnings inures (other than through payment of retirement benefits) to the benefit of any

private shareholder or individual, and

(B) the income consists solely of amounts received from public taxation, amounts received from assessments on the teaching salaries of members, and income in respect of investments.

(12) Benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies, or like organizations; but only if 85 percent or more of the income consists of amounts collected from members for the sole purpose of meeting losses and expenses.

(13) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit; and any corporations chartered solely for burial purposes as a cemetery corporation and not permitted by its charter to engage in any business not necessarily incident to that purpose, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(14) (A) Credit unions without capital stock organized and

operated for mutual purposes and without profit.

(B) Corporations or associations without capital stock organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of shares or deposits in—

(i) domestic building and loan associations,

(ii) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or (iii) mutual savings banks not having capital stock

represented by shares.

(C) Corporations or associations organized before September 1, 1957, and operated for mutual purposes and without profit for the purpose of providing reserve funds for associations or banks described in clause (i), (ii), or (iii) of subparagraph (B); but only if 85 percent or more of the income is attributable to providing such reserve funds and to investments. This subparagraph shall not apply to any corporation or association entitled to exemption under subparagraph (B).3

(15) Mutual insurance companies or associations other than life or marine (including interinsurers and reciprocal underwriters) if the gross amount received during the taxable year from the items described in section 822(b) (other than paragraph (1) (d) thereof), and premiums (including deposits and assess-

ments) does not exceed \$150,000.

(16) Corporations organized by an association subject to part III of this subchapter or members thereof, for the purpose of financing the ordinary crop operations of such members or other producers, and operated in conjunction with such association. Exemption shall not be denied any such corporation because it has capital stock, if the dividend rate of such stock is fixed at not to exceed the legal rate of interest in the State of incorporation or 8 percent per annum, whichever is greater, on the value of the consideration from which the stock was issued, and if substantially all such stock (other than nonvoting preferred stock, the owners of which are not entitled or permitted to participate, directly or indirectly, in the profits of the corporation, on dissolution or otherwise, beyond the fixed dividends) is owned by such association, or members thereof; nor shall exemption be denied any such corporation because there is accumulated and maintained by it a reserve required by State law or a reasonable reserve for any necessary purpose.

(17) (A) A trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation

benefits, if—

(i) under the plan, it is impossible, at any time prior to the satisfaction of all liabilties with respect to employees under the plan, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits,

(ii) such benefits are payable to employees under a classification which is set forth in the plan and which is found by the Secretary or his delegate not to be discriminatory in favor of employees who are officers, shareholders, persons

^{*}P.L. 89-352, sec. 1, amended section 501(c)(14) in its entirety, applicable to taxable years ending after February 2, 1966. Prior to this amendment, section 501(c)(14) read

years ending after February 2, 1966. Prior to this amendment, section out(c)(12) read as follows:

"(14) Credit unions without capital stock organized and operated for mutual purposes and without profit; and corporations or associations without capital stock organized before September 1, 1951, and operated for mutual purposes and without profit for the purpose of providing reserve funds for, and insurance of, shares or deposits in—

(A) domestic building and loan associations,

(B) cooperative banks without capital stock organized and operated for mutual purposes and without profit, or

(C) mutual savings banks not having capital stock represented by shares."

whose principal duties consist of supervising the work of other employees, or highly compensated employees, and

(iii) such benefits do not discriminate in favor of employees who are officers, shareholders, persons whose principal duties consist of supervising the work of other employees, or highly compensated employees. A plan shall not be considered discriminatory within the meaning of this clause merely because the benefits received under the plan bear a uniform relationship to the total compensation, or the basic or regular rate of compensation, of the employees covered by the plan.

(B) In determining whether a plan meets the requirements of subparagraph (A), any benefits provided under any other plan shall not be taken into consideration, except that a plan shall

not be considered discriminatory—

(i) merely because the benefits under the plan which are first determined in a nondiscriminatory manner within the meaning of subparagraph (A) are then reduced by any sick, accident, or unemployment compensation benefits received under State or Federal law (or reduced by a portion of such benefits if determined in a nondiscriminatory manner), or

(ii) merely because the plan provides only for employees who are not eligible to receive sick, accident, or unemployment compensation benefits under State or Federal law the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such laws if such employees were eligible for

such benefits, or

(iii) merely because the plan provides only for employees who are not eligible under another plan (which meets the requirements of subparagraph (A)) of supplemental unemployment compensation benefits provided wholly by the employer the same benefits (or a portion of such benefits if determined in a nondiscriminatory manner) which such employees would receive under such other plan if such employees were eligible under such other plan, but only if the employees eligible under both plans would make a classification which would be nondiscriminatory within the meaning of subparagraph (A).

(C) A plan shall be considered to meet the requirements of subparagraph (A) during the whole of any year of the plan if

on one day in each quarter it satisfies such requirements.

(D) The term "supplemental unemployment compensation

benefits" means only—

(i) benefits which are paid to an employee because of his involuntary separation from the employment of the employer (whether or not such separation is temporary) resulting directly from a reduction in force, the discontinuance of a plant or operation, or other similar conditions, and

(ii) sick and accident benefits subordinate to the bene-

fits described in clause (i).

(E) Exemption shall not be denied under subsection (a) to any organization entitled to such exemption as an association de-

scribed in paragraph (9) of this subsection merely because such organization provides for the payment of supplemental unemployment benefits (as defined in subparagraph (D)(i)).

(d) Religious and Apostolic Organizations.—The following organizations are referred to in subsection (a): Religious or apostolic associations or corporations, if such associations or corporations have a common treasury or community treasury, even if such associations or corporations engage in business for the common benefit of the members, but only if the members thereof include (at the time of filing their returns) in their gross income their entire pro rata shares, whether distributed or not, of the taxable income of the association or corporation for such year. Any amount so included in the gross income of a member shall be treated as a dividend received.

(e) Cross Reference.—

For nonexemption of Communist-controlled organizations, see section 11(b) of the Internal Security Act of 1950 (64 Stat. 997; 50 U.S.C. 790(b)).

# SEC. 631. GAIN OR LOSS IN THE CASE OF TIMBER, COAL, OR DOMESTIC IRON ORE.

(a) Election to Consider Cutting as Sale or Exchange.—If the taxpayer so elects on his return for a taxable year, the cutting of timber (for sale or for use in the taxpayer's trade or business) during such year by the taxpaver who owns, or has a contract right to cut, such timber (providing he has owned such timber or has held such contract right for a period of more than 6 months before the beginning of such year) shall be considered as a sale or exchange of such timber cut during such year. If such election has been made, gain or loss to the taxpayer shall be recognized in an amount equal to the difference between the fair market value of such timber, and the adjusted basis for depletion of such timber in the hands of the taxpayer. Such fair market value shall be the fair market value as of the first day of the taxable year in which such timber is cut, and shall thereafter be considered as the cost of such timber to the taxpayer for all purposes for which such cost is a necessary factor. If a taxpayer makes an election under this subsection, such election shall apply with respect to all timber which is owned by the taxpayer or which the taxpayer has a contract right to cut and shall be binding on the taxpayer for the taxable year for which the election is made and for all subsequent years, unless the Secretary or his delegate, on showing of undue hardship, permits the taxpayer to revoke his election; such revocation, however, shall preclude any further elections under this subsection except with the consent of the Secretary or his delegate. For purposes of this subsection and subsection (b), the term "timber" includes evergreen trees which are more than 6 years old at the time severed from the roots and are sold for ornamental purposes.

(b) DISPOSAL OF TIMBER WITH A RETAINED ECONOMIC INTEREST.—In the case of the disposal of timber held for more than 6 months before such disposal, by the owner thereof under any form or type of contract by virtue of which such owner retains an economic interest in such timber, the difference between the amount realized from the disposal of such timber and the adjusted depletion basis thereof, shall be

considered as though it were a gain or loss, as the case may be, on the sale of such timber. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. The date of disposal of such timber shall be deemed to be the date such timber is cut, but if payment is made to the owner under the contract before such timber is cut the owner may elect to treat the date of such payment as the date of disposal of such timber. For purposes of this subsection, the term "owner" means any person who owns an interest in such timber, including a sublessor and

a holder of a contract to cut timber.

(c) DISPOSAL OF COAL OR DOMESTIC IRON ORE WITH A RETAINED ECONOMIC INTEREST.—In the case of the disposal of coal (including lignite), or iron ore mined in the United States, held for more than 6 months before such disposal, by the owner thereof under any form of contract by virtue of which such owner retains an economic interest in such coal or iron ore, the difference between the amount realized from the disposal of such coal or iron ore, and the adjusted depletion basis thereof plus the deductions disallowed for the taxable year under section 272 shall be considered as though it were a gain or loss, as the case may be, on the sale of such coal or iron ore. Such owner shall not be entitled to the allowance for percentage depletion provided in section 613 with respect to such coal or iron ore. This subsection shall not apply to income realized by any owner as a co-adventurer, partner, or principal in the mining of such coal or iron ore, and the word "owner" means any person who owns an economic interest in coal or iron ore, in place, including a sublessor. The date of disposal of such coal or iron ore shall be deemed to be the date such coal or iron ore is mined. In determining the gross income, the adjusted gross income, or the taxable income of the lessee, the deductions allowable with respect to rents and royalties shall be determined without regard to the provisions of this subsection. This subsection shall have no application, for purposes of applying subchapter G, relating to corporations used to avoid income tax on shareholders (including the determinations of the amount of the deductions under section 535 (b) (6) or section 545(b) (5)). This subsection shall not apply to any disposal of iron ore—

(1) to a person whose relationship to the person disposing of such iron ore would result in the disallowance of losses under sec-

tion 267 or 707(b), or

(2) to a person owned or controlled directly or indirectly by the same interests which own or control the person disposing of such iron ore.

#### SUBCHAPTER K-PARTNERS AND PARTNERSHIPS

SEC. 702. INCOME AND CREDITS OF PARTNER.

(a) General Rule.—In determining his income tax, each partner shall take into account separately his distributive share of the partnership's—

(9) taxable income or loss, exclusive of items requiring separate computation under other paragraphs of this subsection.

### SEC. 707. TRANSACTIONS BETWEEN PARTNER AND PARTNERSHIP.

(c) Guaranteed Payments.—To the extent determined without regard to the income of the partnership, payments to a partner for services or the use of capital shall be considered as made to one who is not a member of the partnership, but only for the purposes of section 61(a) (relating to gross income) and section 162(a) (relating to trade or business expenses).

#### SEC. 761. TERMS DEFINED.

(a) Partnership.—For purposes of this subtitle, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a corporation or a trust or estate. Under regulations the Secretary or his delegate may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or part of this subchapter, if it is availed of—

(1) for investment purposes only and not for the active conduct

of a business, or

(2) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted,

if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

(b) PARTNER.—For the purposes of this subtitle, the term "partner" means a member of a partnership.

## SUBCHAPTER N—TAX BASED ON INCOME FROM SOURCES WITHIN OR WITHOUT THE UNITED STATES

# SEC. 911. EARNED INCOME FROM SOURCES WITHOUT THE UNITED STATES.

(a) General Rule.—The following items shall not be included in gross income and shall be exempt from taxation under this subtitle:

(1) Bona fide resident of foreign country.—In the case of an individual citizen of the United States who establishes to the satisfaction of the Secretary or his delegate that he has been a bona fide resident of a foreign country or countries for an uninterrupted period which includes an entire taxable year, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such uninterrupted period. The amount excluded under this para-

graph for any taxable year shall be computed by applying the

special rules contained in subsection (c).

(2) PRESENCE IN FOREIGN COUNTRY FOR 17 MONTHS.—In the case of an individual citizen of the United States who during any period of 18 consecutive months is present in a foreign country or countries during at least 510 full days in such period, amounts received from sources without the United States (except amounts paid by the United States or any agency thereof) which constitute earned income attributable to services performed during such 18-month period. The amount excluded under this paragraph for any taxable year shall be computed by applying the special rules contained in subsection (c).

An individual shall not be allowed, as a deduction from his gross income, any deductions (other than those allowed by section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income under this subsection.

(b) Definition of Earned Income.—For purposes of this section, the term "earned income" means wages, salaries, or professional fees, and other amounts received as compensation for personal services actually rendered, but does not include that part of the compensation derived by the taxpayer for personal services rendered by him to a corporation which represents a distribution of earnings or profits rather than a reasonable allowance as compensation for the personal services actually rendered. In the case of a taxpayer engaged in a trade or business in which both personal services and capital are material income-producing factors, under regulations prescribed by the Secretary or his delegate, a reasonable allowance as compensation for the personal services rendered by the taxpayer, not in excess of 30 percent of his share of the net profits of such trade or business, shall be considered as earned income.

(c) Special Rules.—For purposes of computing the amount excludable under subsection (a), the following rules shall apply:

(1) LIMITATIONS ON AMOUNT OF EXCLUSION.—The amount excluded from the gross income of an individual under subsection (a) for any taxable year shall not exceed an amount which shall be computed on a daily basis at an annual rate of—

(A) except as provided in subparagraph (B), \$20,000, in the case of an individual who qualifies under subsection (a),

or

(B) \$25,000 in the case of an individual who qualifies under subsection (a) (1), but only with respect to that portion of such taxable year occurring after such individual has been a bona fide resident of a foreign country or countries for an uninterrupted period of 3 consecutive years.

(2) Attribution to year in which services are performed.—For purposes of applying paragraph (1), amounts received shall be considered received in the taxable year in which the services

to which the amounts are attributable are performed.

(3) TREATMENT OF COMMUNITY INCOME.—In applying paragraph (1) with respect to amounts received for services performed by a husband or wife which are community income under community property laws applicable to such income, the aggregate amount excludable under subsection (a) from the gross income of such husband and wife shall equal the amount which

would be excludable if such amounts did not constitute such

community income.

(4) REQUIREMENT AS TO TIME OF RECEIPT.—No amount received after the close of the taxable year following the taxable year in which the services to which the amounts are attributable are performed may be excluded under subsection (a).

(5) CERTAIN AMOUNTS NOT EXCLUDABLE.—No amount—

(A) received as a pension or annuity, or

(B) included in gross income by reason of section 402(b) (relating to taxability of beneficiary or non-exempt trust), section 403(c) (relating to taxability of beneficiary under a non-qualified annuity), or section 403(d) (relating to taxability of beneficiary under certain forfeitable contracts purchased by exempt organizations),

may be excluded under subsection (a).

(6) Test of bona fide residence.—A statement by an individual who has earned income from sources within a foreign country to the authorities of that country that he is not a resident of that country, if he is held not subject as a resident of that country to the income tax of that country by its authorities with respect to such earnings, shall be conclusive evidence with respect to such earnings that he is not a bona fide resident of that country for purposes of subsection (a) (1).

(7) Certain noncash remuneration.—If an individual who qualifies under subsection (a)(1) receives compensation from sources without the United States (except from the United States or any agency thereof) in the form of the right to use property or facilities, the limitation under paragraph (1) applicable with

respect to such individual—

(A) for a taxable year ending in 1963, shall be increased by an amount equal to the amount of such compensation so received during such taxable year;

(B) for a taxable year ending in 1964, shall be increased by an amount equal to two-thirds of such compensation so

received during such taxable year; and

(C) for a taxable year ending in 1965, shall be increased by an amount equal to one-third of such compensation so received during such taxable year.

(d) Cross References.—

(1) For administrative and penal provisions relating to the exclusion provided for in this section, see sections 6001, 6011, 6012(c), and the other provisions of subtitle F.

(2) For elections as to treatment of income subject to foreign community

property laws, see section 981.4

## SEC. 931. INCOME FROM SOURCES WITHIN POSSESSIONS OF THE UNITED STATES.

(a) General Rule.—In the case of citizens of the United States or domestic corporations, gross income means only gross income from sources within the United States if the conditions of both paragraphs (1) and paragraph (2) are satisfied:

⁴P.L. 89-809, sec. 105(e)(3), enacted November 13, 1966, inserted "(1)" before "For administrative", and added paragraph (2).

(1) Three-year period.—If 80 percent or more of the gross income of such citizen or domestic corporation (computed without the benefit of this section) for the 3-year period immediately preceding the close of the taxable year (or for such part of such period immediately preceding the close of such taxable year as may be applicable) was derived from sources within a possession of the United States; and

(2) Trade or business.—If—

(A) in the case of such corporation, 50 percent or more of its gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a pos-

session of the United States; or

(B) in the case of such citizen, 50 percent or more of his gross income (computed without the benefit of this section) for such period or such part thereof was derived from the active conduct of a trade or business within a possession of the United States either on his own account or as an employee or agent of another.

(b) AMOUNTS RECEIVED IN UNITED STATES.—Notwithstanding subsection (a), there shall be included in gross income all amounts received by such citizens or corporations within the United States, whether derived from sources within or without the United States.

(c) DEFINITION.—For purposes of this section, the term "possession of the United States" does not include the Virgin Islands of the United States, and such term when used with respect to citizens of the United States does not include Puerto Rico.

(d) DEDUCTIONS.—

(1) General rule.—Except as otherwise provided in this subsection and subsection (e), in the case of persons entitled to the benefits of this section the deductions shall be allowed only if and to the extent that they are connected with income from sources within the United States; and the proper apportionment and allocation of the deductions with respect to sources of income within and without the United States shall be determined as provided in part I, under regulations prescribed by the Secretary or his delegate.

(2) Exceptions.—The following deductions shall be allowed whether or not they are connected with income from sources within

the United States:

(A) The deduction, for losses not connected with the trade or business if incurred in transactions entered into for profit, allowed by section 165(c)(2), but only if the profit, if such transaction had resulted in a profit, would be taxable under this subtitle.

(B) The deduction, for losses of property not connected with the trade or business if arising from certain casualties or theft, allowed by section 165(c)(3), but only if the loss is of property within the United States.

(C) The deduction for charitable contributions and gifts

allowed by section 170.

(3) DEDUCTION DISALLOWED.—For disallowance of standard deduction, see section 142(b)(2).5

(e) DEDUCTION FOR PERSONAL EXEMPTION.—A citizen of the United States entitled to the benefits of this section shall be allowed a deduc-

tion for only one exemption under section 151.

(f) ALLOWANCE OF DEDUCTIONS AND CREDITS.—Persons entitled to the benefits of this section shall receive the benefit of the deductions and credits allowed to them in this subtitle only by filing or causing to be filed with the Secretary or his delegate a true and accurate return of their total income received from all sources in the United States, in the manner prescribed in subtitle F, including therein all the information which the Secretary or his delegate may deem necessary for the calculation of such deductions and credits.

(g) Foreign Tax Credit.—Persons entitled to the benefits of this section shall not be allowed the credits against the tax for taxes of foreign countries and possessions of the United States allowed by

section 901.

(h) Internes.—In the case of a citizen of the United States interned by the enemy while serving as an employee within a possession of the United States-

(1) if such citizen was confined in any place not within a possession of the United States, such place of confinement shall, for purposes of this section, be considered as within a possession of the United States; and

(2) subsection (b) shall not apply to any compensation received within the United States by such citizen attributable to the period of time during which such citizen was interned by the enemy.

(i) EMPLOYEES OF THE UNITED STATES.—For purposes of this section, amounts paid for services performed by a citizen of the United States as an employee of the United States or any agency thereof shall be deemed to be derived from sources within the United States.

SEC. 932. CITIZENS OF POSSESSIONS OF THE UNITED STATES.

(a) General Rule.—Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall be subject to taxation under this subtitle in the same manner and subject to the same conditions as in the case of a nonresident alien individual. This section shall have no application in the case of a citizen of Puerto Rico.

⁵ P.L. 89-809, sec. 107(a), amended section 931(d) in its entriety, applicable with respect to taxable years beginning after December 31, 1966. Prior to this amendment, section 931(d) read as follows:

"(d) DEDUCTIONS.—

(1) Citizens of the United States entitled to the benefits of this section shall have the same deductions as are allowed by section 873 in the case of a nonresident alien individual engaged in trade or business within the United States.

(2) Domestic corporations entitled to the benefits of this section shall have the same deductions as are allowed by section 882(c) in the case of a foreign corporation engaged in trade or business within the United States."

⁶ P.L. 89-809, sec. 103(m), amended the first sentence of section 932(a) in its entirety, applicable with respect to taxable years beginning after December 31, 1966. Prior to this amendment, this sentence read as follows:

"Any individual who is a citizen of any possession of the United States (but not otherwise a citizen of the United States) and who is not a resident of the United States shall be subject to taxation under this subtitle only as to income derived from sources within the United States, and in such case the tax shall be computed and paid in the same manner and subject to the same conditions as in the case of other persons who are taxable only as to the income derived from such sources."

(b) VIRGIN ISLANDS.—Nothing in this section shall be construed to alter or amend the Act entitled "An Act making appropriations for the naval service for the fiscal year ending June 30, 1922, and for other purposes", approved July 12, 1921 (48 U.S.C. 1397), relating to the imposition of income taxes in the Virgin Islands of the United States.

(c) GUAM.—

For applicability of United States income tax laws in Guam, see section 31 of the Act of August 1, 1950 (48 U.S.C. 1421i); for disposition of the proceeds of such taxes, see section 30 of such Act (48 U.S.C. 1421h).

SEC. 933. INCOME FROM SOURCES WITHIN PUERTO RICO.

The following items shall not be included in gross income and shall

be exempt from taxation under this subtitle:

(1) RESIDENT OF PUERTO RICO FOR ENTIRE TAXABLE YEAR.—In the case of an individual who is a bona fide resident of Puerto Rico during the entire taxable year, income derived from sources within Puerto Rico (except amounts received for services performed as an employee of the United States or any agency thereof); but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction under section 151, relating to personal exemptions) properly allocable to or chargeable against amounts excluded from gross income

under this paragraph.

(2) Taxable year of change of residence from puerto rico.—In the case of an individual citizen of the United States who has been a bona fide resident of Puerto Rico for a period of at least 2 years before the date on which he changes his residence from Puerto Rico, income derived from sources therein (except amounts received for services performed as an employee of the United States or any agency thereof) which is attributable to that part of such period of Puerto Rican residence before such date; but such individual shall not be allowed as a deduction from his gross income any deductions (other than the deduction for personal exemptions under section 151) properly allocable to or chargeable against amounts excluded from gross income under this paragraph.

# PART IV—SPECIAL RULES FOR DETERMINING CAPITAL GAINS AND LOSSES

SEC. 1231. PROPERTY USED IN THE TRADE OR BUSINESS AND INVOLUNTARY CONVERSIONS.

(a) GENERAL RULE.—If, during the taxable year, the recognized gains on sales or exchanges of property used in the trade or business, plus the recognized gains from the compulsory or involuntary conversion (as a result of destruction in whole or in part, theft or seizure, or an exercise of the power of requisition or condemnation or the threat or imminence thereof) of property used in the trade or business and capital assets held for more than 6 months into other property or money, exceed the recognized losses from such sales, exchanges, and conversions, such gains and losses shall be considered

as gains and losses from sales or exchanges of capital assets held for more than 6 months. If such gains do not exceed such losses, such gains and losses shall not be considered as gains and losses from sales or exchanges of capital assets. For purposes of this subsection—

(1) in determining under this subsection whether gains exceed losses, the gains described therein shall be included only if and to the extent taken into account in computing gross income and the losses described therein shall be included only if and to the extent taken into account in computing taxable income, except that section 1211 shall not apply; and

(2) losses upon the destruction, in whole or in part, theft or seizure, or requisition or condemnation of property used in the trade or business or capital assets held for more than 6 months shall be considered losses from a compulsory or involuntary

conversion.

In the case of any property used in the trade or business and of any capital asset held for more than 6 months and held for the production of income, this subsection shall not apply to any loss, in respect of which the taxpayer is not compensated for by insurance in any amount, arising from fire, storm, shipwreck, or other casualty, or from theft.

(b) Definition of Property Used in the Trade or Business.—For

purposes of this section—

(1) GENERAL RULE.—The term "property used in the trade or business" means property used in the trade or business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 6 months, and real property used in the trade or business, held for more than 6 months, which is not—

(A) property of a kind which would properly be includible in the inventory of the taxpayer if on hand at the close of the

taxable year,

(B) property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business, or

(C) a copyright, a literary, musical, or artistic composition, or similar property, held by a taxpayer described in paragraph (3) of section 1221.

(2) TIMBER, COAL, OR DOMESTIC IRON ORE.—Such term includes timber, coal, and iron ore with respect to which section

631 applies.

(3) Livestock.—Such term also includes livestock, regardless of age, held by the taxpayer for draft, breeding, or dairy purposes, and held by him for 12 months or more from the date of

acquisition. Such term does not include poultry.

(4) Unharvested crop.—In the case of an unharvested crop on land used in the trade or business and held for more than 6 months, if the crop and the land are sold or exchanged (or compulsorily or involuntarily converted) at the same time and to the same person, the crop shall be considered as "property used in the trade or business."

#### CHAPTER 2—TAX ON SELF-EMPLOYMENT INCOME

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#### SEC. 1401. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there shall be imposed for each taxable year, on the selfemployment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1967, and before January 1, 1969, the tax shall be equal to 5.8 percent of the amount of the self-employment income for

such taxable year;

(2) in the case of any taxable year beginning after December 31, 1968, and before January 1, 1971, the tax shall be equal to 6.3 percent of the amount of the self-employment income for such taxable year;

(3) in the case of any taxable year beginning after December 31, 1970, and before January 1, 1973, the tax shall be equal to 6.9 percent of the amount of the self-employment income for such

taxable year: and

(4) in the case of any taxable year beginning after December 31, 1972, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year.7

(b) Hospital Insurance.—In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax as follows:

(1) in the case of any taxable year beginning after December 31, 1967, and before January 1, 1973, the tax shall be equal to 0.60 percent of the amount of the self-employment income for such taxable year;

(2) in the case of any taxable year beginning after December 31, 1972, and before January 1, 1976, the tax shall be equal to 0.65 percent of the amount of the self-employment income for

such taxable year;

(3) in the case of any taxable year beginning after December 31, 1975, and before January 1, 1980, the tax shall be equal to 0.70 percent of the amount of the self-employment income for such taxable year;

⁷P.L. 90-248, sec. 109(a)(1), amended paragraphs (1)-(4) of section 1401(a) in their entirety, applicable only with respect to taxable years beginning after December 31, 1967. Prior to this amendment, paragraphs (1)-(4) read as follows:

"(1) in the case of any taxable year beginning after December 31, 1965, and before January 1, 1967, the tax shall be equal to 5.8 percent of the amount of the self-employment income for such taxable year;

"(2) in the case of any taxable year beginning after December 31, 1966, and before January 1, 1969, the tax shall be equal to 5.9 percent of the amount of the self-employment income for such taxable year;

"(3) In the case of any taxable year beginning after December 31, 1968, and before January 1, 1973, the tax shall be equal to 6.6 percent of the amount of the self-employment income for such taxable year; and

"(4) in the case of any taxable year beginning after December 31, 1972, the tax shall be equal to 7.0 percent of the amount of the self-employment income for such taxable year."

(4) in the case of any taxable year beginning after December 31, 1979, and before January 1, 1987, the tax shall be equal to 0.80 percent of the amount of the self-employment income for such taxable year; and

(5) in the case of any taxable year beginning after December 31, 1986, the tax shall be equal to 0.90 percent of the amount of

the self-employment income for such taxable year.8

#### SEC. 1402. DEFINITIONS.

(a) Net Earnings From Self-Employment.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(9) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) there shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant with respect to any such agricultural or horticultural commodity;

(2) there shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest (other than interest described in section 35) are received

⁸ P.L. 90-248, sec. 109(b)(1), inserted paragraphs (1)-(5) of section 1401(b) in lieu of former paragraphs (1)-(6), applicable only with respect to taxable years beginning after December 31, 1967. Prior to this amendment, paragraphs (1)-(6) read as follows:

"(1) in the case of any taxable year beginning after December 31, 1965, and before January 1, 1967, the tax shall be equal to 0.35 percent of the amount of the self-employment income for such taxable year;

"(2) in the case of any taxable year beginning after December 31, 1966, and before January 1, 1973, the tax shall be equal to 0.50 percent of the amount of the self-employment income for such taxable year;

"(3) in the case of any taxable year beginning after December 31, 1972, and before January 1, 1976, the tax shall be equal to 0.55 percent of the amount of the self-employment income for such taxable year:

"(4) in the case of any taxable year beginning after December 31, 1975, and before January 1, 1980, the tax shall be equal to 0.60 percent of the amount of the self-employment income for such taxable year; beginning after December 31, 1979, and before January 1, 1987, the tax shall be equal to 0.70 percent of the amount of the self-employment income for such taxable year; and

"(6) in the case of any taxable year beginning after December 31, 1986, the tax shall be equal to 0.80 percent of the amount of the self-employment income for such taxable year; and

"(6) in the case of any taxable year beginning after December 31, 1986, the tax shall be equal to 0.80 percent of the amount of the self-employment income for such taxable year; and

in the course of a trade or business as a dealer in stocks or securities;

(3) there shall be excluded any gain or loss—

(A) which is considered as gain or loss from the sale or

exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or (C) from the sale, exchange, involuntary conversion, or

other disposition of property if such property is neither—

(i) stock in trade or other property of a kind which

(i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) property held primarily for sale to customers in

the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

(B) any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such

partner;

(6) a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) the deduction for personal exemptions provided in section

151 shall not be allowed;

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c) (4) without regard to section 107 (relating to rental value of parsonages) and section 119 (relating to meals and lodging furnished for the convenience of the employer) and, in addition, if he is a citizen of the United States performing such service as an employee of an American employer (as defined in section 3121(h)) or as a minister in a foreign country who has a congregation which is composed predominantly of citizens of the United States, without regard to section 911 (relating to earned income from sources without

the United States) and section 931 (relating to income from

sources within possessions of the United States);

(9) the term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa; and

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which

such amounts were received, and

(B) no obligation exists (as of the close of the partner-ship's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has ben paid to him in full before the close of the partnership's taxable year referred to in subparagraph

(A).9

If the taxable year of a partner is different from that of the partner-ship, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than \$2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66% percent of

such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than \$2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than \$1,600, the net earnings from self-employment derived by him from such trade or business may at his option, be deemed to be \$1,600; and

⁹ P.L. 90-248, sec. 118(a) (1), (2), and (3), deleted "and" at the end of paragraph (8), inserted "; and" at the end of paragraph (9) in lieu of the period, and inserted paragraph (10), applicable only with respect to taxable years ending on or after December 31, 1967.

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than \$2,400, his distributive share of income described in section 702(a) (9) derived from such trade or business may, at his option, be deemed to be an amount equal to 66% percent of his distributive share of such gross income (after such gross income

has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than \$2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(9) derived from such trade or business (computed under this subsection without regard to this sentence) is less than \$1,600, his distributive share of income described in section 702(a)(9) derived from such trade or business may, at his option, be deemed to be \$1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash recipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of

this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

(b) Self-Employment Income.—The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual) during any

taxable year; except that such term shall not include—

(1) that part of the net earnings from self-employment which

is in excess of—

(A) for any taxable year ending prior to 1955, (i) \$3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) for any taxable year ending after 1954 and before 1959, (i) \$4,200, minus (ii) the amount of the wages paid

to such individual during the taxable year; and

(C) for any taxable year ending after 1958 and before 1966, (i) \$4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) for any taxable year ending after 1965 and before 1968, (i) \$6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and 10

(E) for any taxable year ending after 1967, (i) \$7,800, minus (ii) the amount of the wages paid to such individual

during the taxable year; or 11

(2) the net earnings from self-employment, if such net earn-

ings for the taxable year are less than \$400.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121(l) (relating to coverage of citizens of the United States who are employees of foreign subsidiaries of domestic corporations, as would be wages under section 3121(a)) if such services constituted employment under section 3121(b), and (B) includes, but solely with respect to the tax imposed by section 1401(b), compensation which is subject to the tax imposed by section 3201 or 3211.12 An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual.

(c) Trade or Business.—The term "trade or business" when used with reference to self-employment income or net earnings from selfemployment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term

shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act; 13 14

(2) the performance of service by an individual as an employee,

other than-

(A) service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b) (16),

¹⁰ P.L. 90-248, sec. 108(b) (1) (A), inserted "and before 1908" after "1965", and inserted "; and" in lieu of "; or", applicable only with respect to taxable years ending after 1967.

11 P.L. 90-248, sec. 108(b) (1) (B), added new subparagraph (E), applicable only with respect to taxable years ending after 1967.

12 P.L. 90-248, sec. 502(b) (1), inserted "(A)" after "wages" and inserted before the period ", and (B) includes, but solely with respect to the tax imposed by section 1401(b), compensation which is subject to the tax imposed by section 3201 or 3211", effective only with respect to taxable years ending on or after December 31, 1968.

13 P.L. 90-248, sec. 122(b) (1), amended section 1402(c) (1) in its entirety. Prior to this amendment, section 1402(c) (1) read as follows: "(1) the performance of the functions of a public office;". This amendment applies with respect to fees received after 1967.

14 Sec. 122(c) (2) of P.L. 90-248 provides as follows:

15 "Notwithstanding the provisions of subsections (a) and (b) of this section, any individual who in 1968 is in a position to which the amendments made by such subsections apply may make an irrevocable election not to have such amendments apply to the fees he receives in 1968 and every year thereafter, if on or before the due date of his income tax return for 1968 (including any extensions thereof) he files with the Secretary of the Treasury or his delegate shall by regulations prescribe a certificate of election of exemption from such amendments."

(C) service described in section 3121(b) (11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

and

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act; ¹⁵

(3) the performance of service by an individual as an em-

ployee or employee representative as defined in section 3231;

'(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(5) the performance of service by an individual in the exercise

of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under section (h) is effective with

respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.¹⁶

(d) EMPLOYEE AND WAGES.—The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions

Act).

(e) Ministers, Members of Religious Orders, and Christian

SCIENCE PRACTITIONERS.—

(1) Exemption.—Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of

¹⁵ P.L. 90-248, sec. 122(b)(2), deleted "and" at the end of subparagraph (C), inserted ", and" in lieu of the semicolon at the end of subparagraph (D), and added new subparagraph (E), applicable with respect to fees received after 1967. See footnote 14, this title. ¹⁶ P.L. 90-248, sec. 115(b)(1), amended the last sentence of section 1402(c) in its entirety, applicable only with respect to taxable years ending after 1967. Prior to this amendment, the sentence read as follows: "The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual during the period for which a certificate filed by him under subsection (e) is in effect."

death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any-insurance system established by the Social Security Act), shall receive an exemption from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

(2) Time for filing application.—Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsections (c) (4) and (c) (5)) of \$100 or more, any part of which was derived from the performance of service described in subsection (c) (4) or (c) (5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967.

(3) Effective date of exemption.—An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from selfemployment (computed without regard to subsections (c) (4) and (c)(5)) of \$400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c) (5), and for all succeeding taxable years. An exemption

received pursuant to this subsection shall be irrevocable.¹⁷

(f) Partner's Taxable Year Ending as the Result of Death.— In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection-

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership

taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) TREATMENT OF CERTAIN REMUNERATION ERRONEOUSLY RE-

PORTED AS NET EARNINGS FROM SELF-EMPLOYMENT.—If—

(1) an amount is erroneously paid as tax under section 1401, for any taxable year ending after 1954 and before 1962, with

 $^{^{17}}$  P.L. 90-248, sec. 115(b) (2), amended section 1402(e) in its entirety, applicable only with respect to taxable years ending after 1967. For section 1402(e) as it read prior to this amendment, see pp. 475-478.

respect to remuneration for service described in section 3121 (b)(8) (other than service described in section 3121(b)(8)(A)), and such remuneration is reported as self-employment income on a return filed on or before the due date prescribed for filing such return (including any extension thereof),

(2) the individual who paid such amount (or a fiduciary acting for such individual or his estate, or his survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act)) requests that such remuneration be deemed to constitute net earn-

ings from self-employment,

(3) such request is filed after the date of the enactment of this

paragraph and on or before April 15, 1962,

(4) such remuneration was paid to such individual for services performed in the employ of an organization which, on or before the date on which such request is filed, has filed a certificate pur-

suant to section 3121(k), and

(5) no credit or refund of any portion of the amount erroneously paid for such taxable year as tax under section 1401 (other than a credit or refund which would be allowable if such tax were applicable with respect to such remuneration) has been obtained before the date on which such request is filed or, if obtained, the amount credited or refunded (including any interest under section

6611) is repaid on or before such date,

then, for purposes of this chapter and chapter 21, any amount of such remuneration which is paid to such individual before the calendar quarter in which such request is filed (or before the succeeding quarter if such certificate first becomes effective with respect to services performed by such individual in such succeeding quarter), and with respect to which no tax (other than an amount erroneously paid as tax) has been paid under chapter 21, shall be deemed to constitute net earnings from self-employment and not remuneration for employment. For purposes of section 3121(b)(8)(B) (ii) and (iii), if the certificate filed by such organization pursuant to section 3121(k) is not effective with respect to services performed by such individual on or before the first day of the calendar quarter in which the request is filed, such individual shall be deemed to have become an employee of such organization (or to have become a member of a group described in section 3121(k)(1)(E)) on the first day of the succeeding quarter.

(h) Members of Certain Religious Faiths.—

(1) EXEMPTION.—Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary or his delegate may require for purposes of determining such individual's compliance with the

preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of Health, Education, and Welfare finds

that-

(C) such sect or division thereof has the established tenets

or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at

all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) Time for filing application.—For purposes of this sub-

section, an application must be filed—

(A) In the case of an individual who has self-employment income (determined without regard to this subsection and subsection (c)(6)) for any taxable year ending before December 31, 1967, on or before December 31, 1968, and

(B) In any other case, on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year ending on or after December 31, 1967, for which he has self-employment income (as so determined), except that an application filed after such date but on or before the last day of the third calendar month following the calendar month in which the taxpayer is first notified in writing by the Secretary or his delegate that a timely application for an exemption from the tax imposed by this chapter has not been filed by him shall be deemed to be filed timely.18

¹⁸ P.L. 90-248, sec. 501(a), amended section 1402(h)(2) in its entirety. Prior to this amendment, section 1402(h)(2) read as follows:

"(2) Time for filing application.—For purposes of this subsection, an application

must be filed-

must be filed—

(A) In the case of an individual who has self-employment income (determined without regard to this subsection and subsection (c) (6)) for any taxable year ending before December 31, 1965, on or before April 15, 1966, and

(B) In any other case, on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year ending on or after December 31, 1965, for which he has self-employment income (as so determined)."

This amendment applies with respect to taxable years beginning after December 31, 1960. For such purpose, chapter 2 of the Internal Revenue Code of 1954 shall be treated as applying to all taxable years beginning after such date.

Section 501(c) of the Social Security Amendments of 1967 provides that if refund or credit of any overpayment resulting from the enactment of this section is prevented on January 2, 1968, or at any time on or before December 31, 1968, by the operation of any law or rule of law, refund or credit of such overpayment may, nevertheless, be made or allowed of paid on any overpayment resulting from the enactment of this section.

(3) Period for which exemption effective.—An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year-

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which such individual is a member met

the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which he is a member ceases to meet the requirements of

subparagraph (C) or (D).

(4) Application by fiduciaries or survivors.—In any case where an individual who has self-employment income dies before the expiration of the time prescribed by paragraph (2) for filing an application for exemption pursuant to this subsection, such an application may be filed with respect to such individual within such time by a fiduciary acting for such individual's estate or by such individual's survivor (within the meaning of section 205 (c) (1) (C) of the Social Security Act).

#### SEC. 1403. MISCELLANEOUS PROVISIONS.

(a) TITLE OF CHAPTER.—This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) Cross References.—

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(3) For provisions relating to declarations of estimated tax on self-employment income, see section 6015. 19

### CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

#### SUBCHAPTER A—TAX ON EMPLOYEES

SEC. 3101. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar year

1968, the rate shall be 3.8 percent;

(2) with respect to wages received during the calendar years 1969 and 1970, the rate shall be 4.2 percent;

¹⁹ P.L. 89-368, sec. 102(b)(6), added paragraph (3), applicable with respect to taxable years beginning after December 31, 1966.

(3) with respect to wages received during the calendar years 1971 and 1972, the rate shall be 4.6 percent; and

(4) with respect to wages received after December 31, 1972, the

rate shall be 5.0 percent.20

(b) Hospital Insurance.—In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.60 percent;

(2) with respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 0.65 percent;

(3) with respect to wages received during the calendar years

1976, 1977, 1978, and 1979, the rate shall be 0.70 percent;

(4) with respect to wages received during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.80 percent; and

(5) with respect to wages received after December 31, 1986, the

rate shall be 0.90 percent.21

#### SEC. 3102. DEDUCTION OF TAX FROM WAGES.

(a) REQUIREMENT.—The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7) (B) or (C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar quarter is less than \$50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8) (B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than \$150 and

(1) With respect to Wages received during the calendar years 1967, 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.50 percent;

"(3) with respect to wages received during the calendar years 1967, 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.55 percent;

(3) with respect to wages received during the calendar years 1973, 1974, and 1975, the rate shall be 0.55 percent;

"(4) with respect to wages received during the calendar years 1976, 1977, 1978, and 1979, the rate shall be 0.60 percent;

"(5) with respect to wages received during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.70 percent; and

"(6) with respect to wages received after December 31, 1986, the rate shall be 0.80 percent."

²⁰ P.L. 90-248, sec. 109(a)(2), amended paragraphs (1)-(4) of section 3101(a) in their entirety, applicable only with respect to remuneration paid after December 31, 1967. Prior to this amendment, the deleted paragraphs read as follows:

(1) with respect to wages received during the calendar year 1966, the rate shall be

[&]quot;(1) with respect to wages received during the calendar years 1967 and 1968, the rate shall be 3.9 percent;
"(2) with respect to wages received during the calendar years 1967 and 1968, the rate shall be 3.9 percent;
"(3) with respect to wages received during the calendar years 1969, 1970, 1971, and 1972, the rate shall be 4.4 percent; and
"(4) with respect to wages received after December 31, 1972, the rate shall be 4.85 percent."

1 P.L. 90-248, sec. 109(b)(2), inserted paragraphs (1)-(5) of section 3101(b) in lieu of former paragraphs (1)-(6), applicable only with respect to remuneration paid after December 31, 1967. Prior to this amendment, paragraphs (1)-(6) read as follows:
"(1) with respect to wages received during the calendar year 1966, the rate shall be 0.35 percent;

the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than \$20.

(b) Indemnification of Employer.—Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the

amount of any such payment made by such employer.

(c) Special Rule for Tips.—

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the quarter) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following quarter) an amount of money equal to the amount

of the excess.

(3) The Secretary or his delegate may, under regulations pre-

scribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any quarter of the calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such quarter as if the tips so estimated constituted the actual tips so reported,

and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such quarter (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the quarter to the

amount required to be deducted in respect of tips included in written statements furnished to the employer during the

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

#### SUBCHAPTER B—TAX ON EMPLOYERS

#### SEC. 3111. RATE OF TAX.

(a) Old-Age, Survivors, and Disability Insurance.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121(b))-

(1) with respect to wages received during the calendar year

1968, the rate shall be 3.8 percent;

(2) with respect to wages received during the calendar years 1969 and 1970, the rate shall be 4.2 percent;

(3) with respect to wages received during the calendar years

1971 and 1972, the rate shall be 4.6 percent; and

(4) with respect to wages received after December 31, 1972,

the rate shall be 5.0 percent.²²

(b) Hospital Insurance.—In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121 (b))-

(1) with respect to wages paid during the calendar years 1968,

1969, 1970, 1971, and 1972, the rate shall be 0.60 percent;

(2) with respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 0.65 percent;

(3) with respect to wages paid during the calendar years 1976,

1977, 1978, and 1979, the rate shall be 0.70 percent;

(4) with respect to wages paid during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.80 percent; and

(5) with respect to wages paid after December 31, 1986, the rate

shall be 0.90 percent.23

"(1) with respect to wages paid during the calendar years 1967 and 1968, the rate shall be 3.9 percent;
"(2) with respect to wages paid during the calendar years 1969, 1970, 1971, and 1972, the rate shall be 4.4 percent; and
"(4) with respect to wages paid after December 31, 1972, the rate shall be 4.85 percent."

P.L. 90-248, sec. 109(b) (3), inserted paragraphs (1)-(5) of section 3111(b) in lieu of former paragraphs (1)-(6), applicable only with respect to remuneration paid after December 31, 1967. Prior to this amendment, paragraphs (1)-(6) read as follows:
"(1) with respect to wages paid during the calendar year 1966, the rate shall be 0.35 percent;

²² P.L. 90-248, sec. 109(a)(3), amended paragraphs (1)-(4) of section 3111(a) in their entirety, applicable only with respect to remuneration paid after December 31, 1967. Prior to this amendment, paragraphs (1)-(4) read as follows:

(1) with respect to wages paid during the calendar year 1966, the rate shall be

#### SEC. 3112. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

#### SEC. 3113. DISTRICT OF COLUMBIA CREDIT UNIONS.

Notwithstanding the provisions of section 16 of the Act of June 23, 1932 (D.C. Code, sec. 26-516; 47 Stat. 331), or any other provision of law (whether enacted before or after the enactment of this section) which grants to any credit union chartered pursuant to such Act of June 23, 1932, an exemption from taxation, such credit union shall not be exempt from the tax imposed by section 3111.

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#### SEC. 3121. DEFINITIONS.

(a) Wages.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include-

(1) that part of the remuneration which after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$7,800 24 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employ-

[&]quot;(2) with respect to wages paid during the calendar years 1967, 1968, 1969, 1970, 1971, and 1972, the rate shall be 0.50 percent;
"(3) with respect to wages paid during the calendar years 1973, 1974, and 1975, the rate shall be 0.55 percent;
"(4) with respect to wages paid during the calendar years 1976, 1977, 1978, and 1979, the rate shall be 0.60 percent;
"(5) with respect to wages paid during the calendar years 1980, 1981, 1982, 1983, 1984, 1985, and 1986, the rate shall be 0.70 percent;
"(6) with respect to wages paid after December 31, 1986, the rate shall be 0.80 percent."
"P.L. 90-248, sec. 108(b) (2), amended section 3121(a) (1) by inserting "\$7,800" in lieu of "\$6,600", applicable only with respect to remuneration paid after December 1967.

ment equal to \$7,800 ²⁵ to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as

having been paid by such successor employer;
(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death;

(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to

provide for any such payment) on account of retirement;

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his

beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of

such payment, is a plan described in section 403(a), or

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a);

(6) the payment by an employer (without deduction from the

remuneration of the employee)—

(A) of the tax imposed upon an employee under section

3101 (or the corresponding section of prior law), or

(B) of any payment required from an employee under a

State unemployment compensation law;

(7) (A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

⁵ See footnote 24 above.

(B) cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50. As used in this subparagraph, the term "domestic service in a private home of the employer," does not include service described

in subsection (g)(5);

(C) cash remuneration paid by an employer in any calendar quarter to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g) (5);

(8) (A) remuneration paid in any medium other than cash for

agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (i) the cash remuneration paid in such year by the employer to the employee for such labor is \$150 or more, or (ii) the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis;

(9) any payment (other than vacation or sick pay) made to

an employee after the month in which—

(Å) in the case of a man, he attains the age of 65, or (B) in the case of a woman, she attains the age of 62, if such employee did not work for the employer in the period for

which such payment is made;

(10) remuneration paid by an employer in any calendar quarter to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such quarter by the employer to the employee for such service is less than \$50;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is

allowable under section 217;

(12) (A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is \$20 or more; or

(13) any payment or series of payments by an employer to an

employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of

employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had

not been so terminated.26

(b) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service performed after 1936 and prior to 1955 which was employment for purposes of subchapter A of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee for an American employer (as defined in subsection (h)); except that, in the case of service performed after 1954, such term shall not include-

(1) service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (65 Stat. 119; 7 U.S.C. 1461–1468), or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a tem-

porary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3) (A) service performed by an individual in the employ of his spouse, and service performed by a child under the age of 21

in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be ap-

plicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such em-

ployer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental

²⁵ P.L. 90-248, sec. 504(a), amended section 3121(a) by deleting "or" at the end of paragraph (11), by inserting "; or" in lieu of the period at the end of paragraph (12), and by adding new paragraph (13), applicable with respect to remuneration paid after January 2, 1968.

or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered; ²⁷

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B) (i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of any instrumentality of the United States, if such instrumentality is exempt from the tax imposed by section 3111 by virtue of any provision of law which specifically refers to such section (or the corresponding

section of prior law) in granting such exemption;

(6) (A) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is covered by a retirement system established by a law

of the United States;

(B) service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939 on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

(i) service performed in the employ of a corporation which

is wholly owned by the United States;

(ii) service performed in the employ of a Federal land bank, a Federal intermediate credit bank, a bank for cooperatives, a Federal land bank association, a production credit association, a Federal Reserve Bank, a Federal Home Loan Bank, or a Federal Credit Union;

(iii) service performed in the employ of a State, county, or community committee under the Commodity Stabilization

Service;

(iv) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; or (v) service performed by a civilian employee, not compensate

sated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of the Treasury, at installations of the Coast

^{**}P.L. 90-248, sec. 123(b), amended section 3121(b)(3)(B) by inserting the material at the end thereof beginning "except that the provisions of this subparagraph * * *", applicable with respect to services performed after December 31, 1967.

Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

(C) service performed in the employ of the United States or in the employ of any instrumentality of the United States, if such service is performed—

(i) as the President or Vice President of the United States or as a Member, Delegate, or Resident Commissioner of or

to the Congress;

(ii) in the legislative branch;

(iii) in a penal institution of the United States by an

inmate thereof;

(iv) by any individual as an employee included under section 5351(2) of title 5, United States Code ²⁸ (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), ²⁹ other than as a medical or dental intern or a medical or dental resident in training;

(v) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other

similar emergency; or

(vi) by any individual to whom subchapter III of chapter 83 of title 5, United States Code, 30 does not apply because such individual is subject to another retirement system (other than the retirement system of the Tennessee Valley Authority); or

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this

paragraph shall not apply in the case of-

(A) service which, under subsection (j), constitutes cov-

ered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political

"Government".

Delta 90-248, sec. 403(1)(2), inserted "subchapter III of chapter 83 of title 5, United States Code," in lieu of "the Civil Service Retirement Act".

²⁸ P.L. 90-248, sec. 403(1)(1), amended section 3121(b)(6)(C)(iv) by inserting "under section 5351(2) of title 5, United States Code", in lieu of "under section 2 of the Act of August 4, 194".

²⁸ P.L. 90-248, sec. 403(1)(1), deleted "; 5 U.S.C., sec. 1052" which appeared after "Government".

²⁹ P.L. 90-248, sec. 403(1)(2), inserted "subchapter III of chapter 23 of title 5. United

subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby,

whichever is appropriate, or

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or

inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code ³¹ (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government ³²), other than as a medical or dental intern or as a medical or dental resident in training;

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake,

flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or

other fee basis;

(8) (A) service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required

by such order;

(B) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a), but this subparagraph shall not apply to service performed during the period for which a certificate, filed pursuant to subsection (k) (or the corresponding subsection of prior law), is in effect if such service is performed by an employee—

(i) whose signature appears on the list filed by such organization under subsection (k) (or the corresponding subsec-

tion of prior law),

(ii) who became an employee of such organization after the calendar quarter in which the certificate (other than a certificate referred to in clause (iii)) was filed, or

(iii) who, after the calendar quarter in which the certificate was filed with respect to a group described in section 3121

(k)(1)(E), became a member of such group,

except that this subparagraph shall apply with respect to service performed by an employee as a member of a group described in section 3121(k)(1)(E) with respect to which no certificate is in effect;

(9) service performed by an individual as an employee or

employee representative as defined in section 3231;

²¹ P.L. 90-248, sec. 403(i)(3), amended section 3121(b)(7)(C)(ii) by inserting "under section 5351(2) of title 5, United States Code", in lieu of "under section 2 of the Act of August 4, 1947", and by deleting "; 5 U.S.C. 1052" which appeared after "Government". See footnote 31, above.

(10) (A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50;

(B) service performed in the employ of a school, college, or university if such service is performed by a student who is enrolled and is regularly attending classes at such school, college,

or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality

wholly owned by a foreign government-

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State, shall certify to the Secretary that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training

school chartered or approved pursuant to State law;

(14) (A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent

delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international or-

ganization;

(16) service performed by an individual under an arrangement

with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced: (17) service in the employ of any organization which is performed (A) in any quarter during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a non-immigrant alien admitted to Guam pursuant to section 101(a) (15) (H) (ii) of the Immigration and Nationality Act (8 U.S.C.

1101(a) (15) (H) (ii)); or

(19) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a) (15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose speci-

fied in subparagraph (F) or (J), as the case may be.

(c) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b) (9).

(d) EMPLOYEE.—For purposes of this chapter, the term "employee"

means-

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for

remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agentdriver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use

in their business operations; if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(e) STATE, UNITED STATES, AND CITIZEN.—For purposes of this

chapter—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) United States.—The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico,

the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered,

for purposes of this section, as a citizen of the United States.

(f) American Vessel and Aircraft.—For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(g) AGRICULTURAL LABOR.—For purposes of this chapter, the term

"agricultural labor" includes all service performed-

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550,

§ 3; 12 U.S.C. 1441j), or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming

purposes;

(4) (A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect

to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar quarter in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for con-

sumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service

in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) AMERICAN EMPLOYER.—For purposes of this chapter, the term

"American employer" means an employer which is-

(1) the United States or any instrumentality thereof, (2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States

or of any State.

(i) Computation of Wages in Certain Cases.—

(1) Domestic service.—For purposes of this chapter, in the case of domestic service described in subsection (a) (7) (B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a frac-

tional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to \$1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for pur-

poses of subsection (a) (7) (B).

(2) Service in the uniformed services.—For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m) (1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) (1) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act.

(3) Peace corps volunteer service.—For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term "wages" shall, subject to the provisions of subsection (a) (1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or

6(1) of the Peace Corps Act.

(j) Covered Transportation Service.—For purposes of this

chapter—

(1) Existing transportation systems—General rule.—Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) EXISTING TRANSPORTATION SYSTEMS—CASES IN WHICH NO TRANSPORTATION EMPLOYEES, OR ONLY CERTAIN EMPLOYEES, ARE COVERED.—Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation serv-

ice if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951; except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition

after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions appli-

cable only to employees described in subparagraph (C).

(3) Transportation systems acquired after 1950.—All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) Definitions.—For the purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with

the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instru-

mentality of—

(i) a State,

(ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

(k) Exemption of Religious, Charitable, and Certain Other Organizations.—

(1) WAIVER OF EXEMPTION BY ORGANIZATION.—

(A) An organization described in section 501(c) (3) which is exempt from income tax under section 501(a) may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that it desires to have the insurance system established by title II of the Social Security Act extended to service performed by its employees. Such certificate may be filed only if it is accompanied by a list containing the signature, address, and social security account number (if any) of each employee (if any) who concurs in the filing of the certificate. Such list may be amended at any time prior to the expiration of the twenty-fourth month following the calendar quarter in which the certificate is filed by filing with the prescribed official a supplemental list or lists containing the signature, address, and social security account number (if any) of each additional employee who concurs in the filing of the certificate. The list and any supplemental list shall be filed in such form and manner as may be prescribed by regulations made under this chapter.

(B) The certificate shall be in effect (for purposes of subsection (b) (8) (B) and for purposes of section 210(a) (8) (B) of the Social Security Act) for the period beginning with whichever of the following may be designated by the orga-

nization:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding

such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter

in which such certificate is filed.

(C) In the case of service performed by an employee whose name appears on a supplemental list filed after the first month following the calendar quarter in which the certificate is filed, the certificate shall be in effect (for purposes of subsection (b) (8) (B) and for purposes of section 210(a) (8) (B) of the Social Security Act) only with respect to service performed by such individual for the period beginning with the first day of the calendar quarter in which such supplemental list is filed.

(D) The period for which a certificate filed pursuant to this subsection or the corresponding subsection of prior law is effective may be terminated by the organization, effective at the end of a calendar quarter, upon giving 2 years' advance notice in writing, but only if, at the time of the receipt of such notice, the certificate has been in effect for a period of not less than 8 years. The notice of termination may be revoked by the organization by giving, prior to the close of

the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner, and with such official, as may be prescribed by regulations

made under this chapter.

(E) If an organization described in subparagraph (A) employs both individuals who are in positions covered by a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof and individuals who are not in such positions, the organization shall divide its employees into two separate groups. One group shall consist of all employees who are in positions covered by such a fund or system and (i) are members of such fund or system, or (ii) are not members of such fund or system but are eligible to become members thereof; and the other group shall consist of all remaining employees. An organization which has so divided its employees into two groups may file a certificate pursuant to subparagraph (A) with respect to the employees in either group, or may file a separate certificate pursuant to such subparagraph with respect to the employees in each group.

(F) An organization which filed a certificate under this subsection after 1955 but prior to the enactment of this subparagraph may file a request at any time before 1960 to have such certificate effective, with respect to the service of individuals who concurred in the filing of such certificate (initially or through the filing of a supplemental list) prior to enactment of this subparagraph and who concur in the filing of such new request, for the period beginning with the first day of any calendar quarter preceding the first calendar quarter for which it was effective and following the last calendar quarter of 1955. Such request shall be filed with such official and in such form and manner as may be prescribed by regulations made under this chapter. If a request

is filed pursuant to this subparagraph—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for any calendar quarter resulting from the filing of such request shall be the last day of the calendar month following the calendar quarter in which the request is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years

from such due date.

(G) If a certificate filed pursuant to this paragraph is effective for one or more calendar quarters prior to the

quarter in which the certificate is filed, then-

(i) for purposes of computing interest and for purposes of section 6651 relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the

last day of the calendar month following the calendar

quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

(H) An organization which files a certificate under subparagraph (A) before 1966 may amend such certificate during 1965 or 1966 to make the certificate effective with the first day of any calendar quarter preceding the quarter for which such certificate originally became effective, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is so amended. If an organization amends its certificate pursuant to the preceding sentence, such amendment shall be effective with respect to the service of individuals who concurred in the filing of such certificate (initially or through the filing of a supplemental list) and who concur in the filing of such amendment. An amendment to a certificate filed pursuant to this subparagraph shall be filed with such official and in such form and manner as may be prescribed by regulations made under this chapter. If an amendment is filed pursuant to this subparagraph—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for any calendar quarter resulting from the filing of such an amendment shall be the last day of the calendar month following the calendar

quarter in which the amendment is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of three years from such due date.

(2) TERMINATION OF WAIVER PERIOD BY SECRETARY OR HIS DELEGATE.—If the Secretary or his delegate finds that any organization which filed a certificate pursuant to this subsection or the corresponding subsection of prior law has failed to comply substantially with the requirements applicable with respect to the taxes imposed by this chapter or the corresponding provisions of prior law or is no longer able to comply with the requirements applicable with respect to the taxes imposed by this chapter, the Secretary or his delegate shall give such organization not less than 60 days' advance notice in writing that the period covered by such certificate will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the organization. No notice of termination or of revocation thereof shall be given under this paragraph to an organization without the prior concurrence of the Secretary of Health, Education, and Welfare.

(3) No renewal of waiver.—In the event the period covered by a certificate filed pursuant to this subsection or the corresponding subsection of prior law is terminated by the organization, no

certificate may again be filed by such organization pursuant to this subsection.

(1) AGREEMENTS ENTERED INTO BY DOMESTIC CORPORATIONS WITH

RESPECT TO FOREIGN SUBSIDIARIES.—

(1) AGREEMENT WITH RESPECT TO CERTAIN EMPLOYEES OF FOREIGN SUBSIDIARIES.—The Secretary or his delegate shall, at the request of any domestic corporation, enter into an agreement (in such form and manner as may be prescribed by the Secretary or his delegate) with any such corporation which desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any one or more of its foreign subsidiaries (as defined in paragraph (8)) by all employees who are citizens of the United States, except that the agreement shall not be applicable to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States. Such agreement may be amended at any time so as to be made applicable, in the same manner and under the same conditions, with respect to any other foreign subsidiary of such domestic corporation. Such agreement shall be applicable with respect to citizens of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign subsidiary specified in the agreement. Such agreement shall provide-

(A) that the domestic corporation shall pay to the Secretary or his delegate, at such time or times as the Secretary or his delegate may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be wages if the services covered by the agreement constituted employment as defined in this section;

and

(B) that the domestic corporation will comply with such regulations relating to payments and reports as the Secretary or his delegate may prescribe to carry out the purposes of this

subsection.

(2) Effective period of agreement.—An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement, but in no case prior to January 1, 1955; except that in case such agreement is amended to include the services performed for any other subsidiary and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other subsidiary only after the calendar quarter in which such amendment is executed.

(3) TERMINATION OF PERIOD BY A DOMESTIC CORPORATION.—The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign subsidiaries by the domestic corporation, effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the domestic corporation by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign corporation shall terminate at the end of any calendar quarter in which the foreign corporation, at any time in such quarter, ceases to be a foreign subsidiary as defined in paragraph (8).

(4) Termination of period by secretary.—If the Secretary or his delegate finds that any domestic corporation which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary or his delegate shall give such domestic corporation not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be revoked by the Secretary or his delegate by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the domestic corporation. No notice of termination or of revocation thereof shall be given under this paragraph to a domestic corporation without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) No RENEWAL OF AGREEMENT.—If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the domestic corporation pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary or his delegate pursuant to paragraph (4), the domestic corporation may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign subsidiary, such agreement may not thereafter be amended so as again to make it applicable with respect to such subsidiary.

(6) Deposits in trust funds.—For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the

services constituted employment, and
(B) as is reported to the Secretary or his delegate pursuant to the provisions of such agreement or of the regulations

issued under this subsection, shall be considered wages subject to the taxes imposed by this chapter.

(7) OVERPAYMENTS AND UNDERPAYMENTS.—

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary or his delegate.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary or his delegate, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary or his delegate within two

years from the time such overpayment was made.

(8) DEFINITION OF FOREIGN SUBSIDIARY.—For purposes of this subsection and section 210(a) of the Social Security Act, a foreign subsidiary of a domestic corporation is—

(A) a foreign corporation not less than 20 percent of the voting stock of which is owned by such domestic corporation,

or

(B) a foreign corporation more than 50 percent of the voting stock of which is owned by the foreign corporation

described in subparagraph (A).

(9) Domestic corporation as separate entity.—Each domestic corporation which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign corporations, be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) REGULATIONS.—Regulations of the Secretary or his delegate to carry out the purposes of this subsection shall be designed to make the requirements imposed on domestic corporations with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes

imposed by this chapter.

(m) Service in the Uniformed Services.—For purpose of this

chapter—

(1) Inclusion of Service.—The term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) ACTIVE DUTY.—The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act, except that it shall also include "active duty

for training" as described in such section.

(3) INACTIVE DUTY TRAINING.—The term "inactive duty training" means "inactive duty training" as described in such section

(n) Member of a Uniformed Service.—For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps

Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air

Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or

naval service-

(A) who has been provisionally accepted for such duty;

or

(B) who, under the Universal Military Training and Service Act, has been selected for active military or naval service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(o) Crew Leader.—For purposes of this chapter, the term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(p) Peace Corps Volunteer Service.—For purposes of this chapter, the term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of

the Peace Corps Act.

(q) The Included for Employee Taxes.—For purposes of this chapter other than for purposes of the taxes imposed by section 3111,

tips received by an emloyee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

### SEC. 3122. FEDERAL SERVICE.

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination whether an individual has performed service which constitutes employment as defined in section 3121(b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121(a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the \$7,800 33 limitation in section 3121(a) (1), and he shall not be required to obtain a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121 (a) (1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary shall be deemed to be the head of such instrumentality.

^{**}P.L. 90-248, sec. 108(b) (3), inserted "\$7.800" in lieu of "\$6,600", applicable only with respect to remuneration paid after December 1967.

⁹⁰⁻²⁷⁵ O-68-pt. 1-28

#### SEC. 3123. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of any employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

#### SEC. 3124. ESTIMATE OF REVENUE REDUCTION.

The Secretary or his delegate at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b) (9) and shall include such estimate in his annual report.

# SEC. 3125. RETURNS IN THE CASE OF GOVERNMENTAL EMPLOYEES IN GUAM, AMERICAN SAMOA, AND THE DISTRICT OF COLUMBIA.

(a) GUAM.—The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the \$7,800 34 limitation in section 3121(a) (1).

(b) AMERICAN SAMOA.—The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the \$7,800 35

limitation in section 3121(a)(1).
(c) DISTRICT OF COLUMBIA.—In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Commissioners of the District of Columbia or by such agents as they may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the \$7,800 36 limitation in section 3121(a)(1).

<sup>P.L. 90-248, sec. 108(b) (4), amended subsections (a), (b), and (c) of section 3125, by inserting "\$7,800" in lieu of "\$6,600", applicable only with respect to remuneration paid after December 1967.
See footnote 34, above.
See footnote 34, above.</sup> 

#### SEC. 3126. SHORT TITLE.

This chapter may be cited as the "Federal Insurance Contributions Act."

# CHAPTER 22—RAILROAD RETIREMENT TAX ACT 37

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## SEC. 3231. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary or his delegate, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (44 Stat. 577; 45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and hylaws of such organizations. The term "employer" shall not in-

³⁷ Only sec. 3231 is reprinted here. For other sections of ch. 22, see the Internal Revenue Code of 1954.

clude any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities

therefor, or in any of such activities.

(b) EMPLOYEE.—For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not

consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was

employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before

August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 calendar months as provided in para-

 $\operatorname{graph}(2)$ ; or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority

rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (50 Stat. 312; 45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered a service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an

employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not

beyond the mine tipple, or the loading of coal at the tipple.

(c) Employee Representative.—For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (44 Stat. 577; 45 U.S.C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) Service.—For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or

without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation; except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the prin-

cipal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located

in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in

paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its

business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to

the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (50 Stat. 308; 45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation; Provided, however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable

(e) Compensation.—For purposes of this chapter—

there at all times prior to that date.

(1) The term "compensation" means any form of money remuneration earned by an individual for services rendered as an employee to one or more employers, or as an employee representa-tive, including remuneration paid for time lost as an employee, but remuneration paid for time lost shall be deemed earned in the month in which such time is lost. Such term does not include tips (except as is provided under paragraph (3)), or the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201. Compensation which is earned during the period for which the Secretary or his delegate shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only. For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than \$3. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) A payment made by an employer to an individual through the employer's payroll shall be presumed, in the absence of evidence to the contrary, to be compensation for service rendered by such individual as an employee of the employer in the period with respect to which the payment is made. An employee shall be deemed to be paid "for time lost" the amount he is paid by an employer with respect to an identifiable period of absence from the active service of the employer, including absence on account of personal injury, and the amount he is paid by the employer for

loss of earnings resulting from his displacement to a less remunerative position or occupation. If a payment is made by an employer with respect to a personal injury and includes pay for time lost, the total payment shall be deemed to be paid for time lost unless, at the time of payment, a part of such payment is specifically apportioned to factors other than time lost, in which event only such part of the payment as is not so apportioned shall be deemed to be paid for time lost.

(3) Solely for purposes of the tax imposed by section 3201 and other provisions of this chapter insofar as they relate to such tax, the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than

\$20.

(f) Company.—For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

(g) Carrier.—For purposes of this chapter, the term "carrier" means an express company, sleeping-car company, or carrier by railroad, subject to part I of the Interstate Commerce Act (49 U.S.C., chapter 1).

(h) The Constituting Compensation, Time Deemed Paid.—For purposes of this chapter, tips which constitute compensation for purposes of the tax imposed under section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month.

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#### SEC. 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1961 and for each calendar year thereafter an excise tax, with respect to having individuals in his employ equal to 3.1 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)) after December 31, 1938. In the case of wages paid during the calendar year 1962, the rate of such tax shall be 3.5 percent in lieu of 3.1 percent. In the case of wages paid during the calendar year 1963, the rate of such tax shall be 3.35 percent in lieu of 3.1 percent.

^{*} This chapter has been compiled by the United States Department of Labor.

#### SEC. 3302. CREDITS AGAINST TAX.

(a) Contributions to State Unemployment Funds.—

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified for the taxable year as provided in section 3304.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to

such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on

or before such last day.

(4) Upon the payment of contributions into the unemployement fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(b) Additional Credit.—In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified for the taxable year as provided in section 3303 (or with respect to any provisions thereof so certified), equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been rerequired to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in the taxable year to any person having individuals in his employ, or to a

rate of 2.7 percent, whichever rate is lower.

# (c) Limit on Total Credits.—

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act before the date of the enactment of the Employment

Security Act of 1960,39 then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A) in the case of a taxable year beginning on January 1, 1963 (and in the case of any succeeding taxable year beginning before January 1, 1968), as of the beginning of which there is a balance of such advances, by 5 percent of the tax imposed by section 3301 with respect to the wages paid by such taxable year which are attributable

to such State; and

(B) in the case of any succeeding taxable year beginning on or after January 1, 1968, as of the beginning of which there is a balance of such advances, by an additional 5 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxable year which are attributable to such State.

At the request (made before November 1 of the taxable year) of the Governor of any State, the Secretary of Labor shall, as soon as practicable after June 30 or (if later) the date of the receipt of such request, certify to such Governor and to the Secretary of the Treasury the amount he estimates equals .15 percent (plus an additional .15 percent for each additional 5-percent reduction, provided by subparagraph (B)) of the total of the remuneration which would have been subject to contributions under the State unemployment compensation law with respect to the calendar year preceding such certification if the dollar limit on remuneration subject to contributions under such law were equal to the dollar limit under section 3306(b)(1) for such calendar year. If, after receiving such certification and before November 10 of the taxable year, the State pays into the Federal unemployment account the amount so certified (and designates such payment as being made for purposes of this sentence), the reduction provided by the first sentence of this paragraph shall not apply for such taxable year.

(3) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act on or after the date of the enactment of the Employment Security Act of 1960, then the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of

such State shall be reduced—

(A) (i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 10 percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

 $^{^{89}\,} The$  Employment Security Act of 1960 (title V of P.L. 86-778), was enacted on September 13, 1960.

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 10 percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxable year which are attributable to such State by the

percentage (if any) by which-

(i) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year;

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

(d) Definitions and Special Rules Relating to Subsection (c).

(1) RATE OF TAX DEEMED TO BE 3 PERCENT.—In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 3 percent in lieu of the rate provided by such section.

(2) Wages attributable to a particular state.—For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary or his delegate) to be attributable to such State.

(3) Additional taxes inapplicable where advances are repaid before november 10 of taxable year.—Paragraph (2) or (3) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) Average employer contribution rate.—For purposes of subparagraphs (B) and (C) of subsection (c)(3), the average employer contribution rate for any State for any calendar year

is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law wih respect to such calendar year.

For purposes of subparagraph (C) of subsection (c) (3), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

(5) 5-YEAR BENEFIT COST RATE.—For purposes of subparagraph (C) of subsection (c) (3), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by

dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) ROUNDING.—If any percentage referred to in either subparagraph (B) or (C) of subsection (c) (3) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) DETERMINATION AND CERTIFICATION OF PERCENTAGES.—The percentage referred to in subsection (c) (3) (B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(8) Cross reference.—

For reduction of total credits allowable under subsection (c), see section 104 of the Temporary Unemployment Compensation Act of 1958.

### SEC. 3303. CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE.

(a) State Standards.—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor

finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

⁴⁰ For. sec. 104 of the Temporary Unemployment Compensation Act of 1958, see p. 905, vol. II.

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the

year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

(C) such contributions were payable to such account with

respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis, the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date.

(b) Certification by the Secretary of Labor With Respect to

Additional Credit Allowance.—

(1) On December 31 in each taxable year, the Secretary of Labor shall certify to the Secretary the law of each State (certified with respect to such year by the Secretary of Labor as provided in section 3304) with respect to which he finds that reduced rates of contributions were allowable with respect to such taxable year only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any taxable year, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on December 31 of such taxable year, certify to the Secretary only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such taxable year under conditions fulfilling the

requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary of Labor shall make such certification purusant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of such State law, or of the provisions thereof with respect to which such findings were made, for any taxable year pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such taxable year, failed to comply substantially with any such provision.

(c) Definitions.—As used in this section—

(1) RESERVE ACCOUNT.—The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) POOLED FUND.—The term "pooled fund" means an unemployment fund or any part therof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensa-

tion from such fund.

(3) Partially pooled account.—The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) Guaranteed employment account.—The term "guaranteed employment account" means a separate account, in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan

thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders

services), and

(B) give security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) YEAR.—The term "year" means any 12 consecutive calendar

months.

(6) BALANCE.—The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) Computation date.—The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions,

as of which such rates are computed.

(8) Reduced rate.—The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the

basis of which variations therefrom are computed.

(d) Voluntary Contributions.—A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

# SEC. 3304. APPROVAL OF STATE LAWS.41

(a) REQUIREMENTS.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may

approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (49 Stat. 640; 52 Stat. 1104, 1105; 42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except

that-

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(B) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices;

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work un-

der any of the following conditions:

(A) if the position offered is vacant due directly to a

strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6) all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.
(b) Notification.—The Secretary of Labor shall, upon approving

such law, notify the governor of the State of his approval.

⁴¹ P.L. 86-778. sec. 543(b), approved September 13, 1960, provided the terms and conditions under which the unemployment compensation law of the Commonwealth of Puerto Rico would meet the requirements of sec. 3304(a) (2) and (3). See p. 504, vol. II.

(c) Certification.—On December 31 of each taxable year the Secretary of Labor shall certify to the Secretary of each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to such taxable year failed to comply substantially with any such provision and such finding has become effective. Such finding shall become effective on the 90th day after the governor of the State has been notified thereof, unless the State has before such 90th day so amended its law that it will comply substantially with the Secretary of Labor's interpretation of the provision of subsection (a), in which event such finding shall not become effective. No finding of a failure to comply substantially with the provision in State law specified in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law with respect to which further administrative or judicial review is provided for under the laws of the State.

(d) Notice of Noncertification.—If, at any time during the taxable year, the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

SEC. 3305. APPLICABILITY OF STATE LAW.

(a) Interstate and Foreign Commerce.—No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign

commerce and those engaged in intrastate commerce.

(b) Federal Instrumentalities in General.—The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c) (6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemployment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State

unemployment compensation law.

(c) National Banks.—Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) FEDERAL PROPERTY.—No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or

possessed by the United States.

(e) Bonneville Power Administrator.—[Repealed.]

(f) AMERICAN VESSELS.—The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unempolyment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) Vessels Operated by General Agents of United States.— The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed on or after July 1, 1953, by officers and members of the crew on or in connection with American vessels—

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents. As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumenalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) REQUIREMENT BY STATE OF CONTRIBUTIONS.—Any State may, as to service performed on or after July 1, 1953, and on account of

which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary

disability insurance law.

(i) General Agent as Legal Entity.—Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

#### SEC. 3306. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter, the term "employer" does not include any person unless on each of some 20 days during the taxable year, each day being in a different calendar week, the total number of individuals who were employed by him in employment for some portion of the day (whether or not at the same moment of time) was 4 or more.

(b) Wages.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such

term shall not include-

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to \$3,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred

to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to \$3,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally, (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes

of his employees and their dependents), on account of-

(A) retirement, or

(B) sickness or accident disability, or

(C) medical or hospitalization expenses in connection with sickness or accident disability, or

(D) death;

(3) any payment made to an employee (including any amount paid by an employer for insurance or annuities, or into a fund, to

provide for any such payment) on account of retirement;

(4) any payment on account or sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his

beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such

payment, is a plan described in section 403(a), or

(C) under or to a bond purchase plan which, at the time such payment, is a qualified bond purchase plan described in section 405(a)

(6) the payment by an employer (without deduction from the

remuneration of the employee)-

(A) of the tax imposed upon an employee under section 3101 (or the corresponding section of prior law), or

(B) of any payment required from an employee under a

State unemployment compensation law;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

(8) any payment (other than vacation or sick pay) made to an employee after the month in which he attains the age of 65, if he did not work for the employer in the period for which such

payment is made,

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217; or

(10) any payment or series of payments by an employer to an

employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, (ii) retirement for disability, or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or classes of

employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not

been so terminated.42

(c) Employment.—For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1954 by an employee for the person employing him irrespective of the citizenship or residence of either, (A) within the United States, or (B) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, except—

(1) agricultural labor (as defined in subsection (k));

(2) domestic service in a private home, local college club, or

local chapter of a college fraternity or sorority;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is \$50 or more and such service is performed by an individual who is regularly employed

⁴² P.L. 90-248, sec. 504(b), amended section 3306(b) by deleting "or" at the end of paragraph (8), inserting "; or" at the end of paragraph (9) in lieu of the period, and adding new paragraph (10), applicable with respect to remuneration paid after January 2, 1968.

by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(Å) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or

business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar

quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under

the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or (B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in

granting such exemptions;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c) (3)

which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (52 Stat. 1094, 1095; 45 U.S.C. 351);

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than \$50, or

(B) service performed in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college, or

university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality

wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and

of instrumentalities thereof:

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to a State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for

remuneration solely by way of commission;

(15) (A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for sub-

sequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international or-

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States); or

(18) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a) (15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose speci-

fied in subparagraph (F) or (J), as the case may be.

(d) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c) (9).

(e) STATE AGENCY.—For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) UNEMPLOYMENT FUND.—For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (49 Stat. 640; 52 Stat. 1104, 1105; 42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment funds of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that-

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclu-

sive of expenses of administration; and

(2) the amounts specified by section 903(c) (2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

(g) Contributions.—For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) Compensation.—For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) Employee.—For purposes of this chapter, the term "employee" includes an officer of a corporation, but such term does not include—

(1) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an independent contractor, or

(2) any individual (except an officer of a corporation) who is

not an employee under such common law rules.

(j) STATE, UNITED STATES, AND CITIZEN.—For purposes of this chapter—

(1) STATE.—The term "State" includes the District of Colum-

bia and the common wealth of Puerto Rico.

(2) UNITED STATES.—The term "United States" when used in a geographical sense includes the States, the District of Columbia, and the Commonwealth of Puerto Rico.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered for purposes of this section, as a citizen of the United States.

(k) AGRICULTURAL LABOR.—For purposes of this chapter, the term

"agricultural labor" includes all service performed-

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such

service is performed on a farm;

(3) in connection with the production or harvesting of maple sirup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (46 Stat. 1550, § 3; 12 U.S.C. 1141j), or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes; or

(4) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this para-

graph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, on truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultual or horticultural com-

modities, and orchards.

(1) CERTAIN EMPLOYEES OF BONNEVILLE POWER ADMINISTRATION.—

[Repealed.]

(m) American Vessel and Aircraft.—For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) VESSEL OPERATED BY GENERAL AGENTS OF UNITED STATES.—Notwithstanding the provisions of subsection (c)(6), service performed on or after July 1, 1953, by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is per-

formed on or in connection with an American vessel-

1 2

(1) owned by or bareboat chartered to the United States, and (2) whose business is conducted by a general agent of the Secre-

tary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

# SEC. 3307. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this chapter or any act of Congress or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amounts so deducted shall be considered to have been paid to the employee at the time of such deduction.

### SEC. 3308. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

#### SEC. 3309. SHORT TITLE.

This chapter may be cited as the "Federal Unemployment Tax Act."

# CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES

# SEC. 3501. COLLECTION AND PAYMENT OF TAXES.

The taxes imposed by this subtitle shall be collected by the Secretary or his delegate and shall be paid into the Treasury of the United States as internal-revenue collections.

# SEC. 3502. NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

#### SEC. 3503. ERRONEOUS PAYMENTS.

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

#### SEC. 3504. ACTS TO BE PERFORMED BY AGENTS.

In case a fiduciary agent, or other person has the control, receipt, custody, or disposal of, or pays the wages of an employee or group of employees, employed by one or more employers, the Secretary or his delegate, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary or his delegate may specify. Except as may be otherwise prescribed by the Secretary or his delegate, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

# Subtitle F—Procedure and Administration CHAPTER 61—INFORMATION AND RETURNS

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# SEC. 6001. NOTICE OR REGULATIONS REQUIRING RECORDS, STATE-MENTS, AND SPECIAL RETURNS.

Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

# SEC. 6011. GENERAL REQUIREMENT OF RETURN, STATEMENT, OR LIST.

(a) General Rule.—When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

(b) IDENTIFICATION OF TAXPAYER.—The Secretary or his delegate is authorized to require such information with respect to persons subject to the taxes imposed by chapter 21 or chapter 24 as is necessary or

helpful in securing proper identification of such persons.

# SEC. 6017. SELF-EMPLOYMENT TAX RETURNS.

Every individual (other than a nonresident alien individual) having net earnings from self-employment of \$400 or more for the taxable year shall make a return with respect to the self-employment tax imposed by chapter 2. In the case of a husband and wife filing a joint return under section 6013, the tax imposed by chapter 2 shall not be computed on the aggregate income but shall be the sum of the taxes computed under such chapter on the separate self-employment income of each spouse.

#### SEC. 6020. RETURNS PREPARED FOR OR EXECUTED BY SECRETARY.

(a) Preparation of Return by Secretary.—If any person shall fail to make a return required by this title or by regulations prescribed thereunder, but shall consent to disclose all information necessary for the preparation thereof, then, and in that case, the Secretary or his delegate may prepare such return, which, being signed by such person, may be received by the Secretary or his delegate as the return of such

(b) Execution of Return by Secretary.—

(1) AUTHORITY OF SECRETARY TO EXECUTE RETURN.—If any person fails to make any return (other than a declaration of estimated tax required under section 6015 or 6016) required by any internal revenue law or regulation made thereunder at the time prescribed therefor, or makes, willfully or otherwise, a false or fraudulent return, the Secretary or his delegate shall make such return from his own knowledge and from such information as he can obtain through testimony or otherwise.

(2) Status of returns.—Any return so made and subscribed by the Secretary or his delegate shall be prima facie good and

sufficient for all legal purposes.

### SEC. 6051. RECEIPTS FOR EMPLOYEES.

(a) Requirement.—Every person required to deduct and withhold from an employee a tax under section 3101, 3201, or 3402,43 or who would have been required to deduct and withhold a tax under section 3402 if the employee had claimed no more than one withholding exemption, shall furnish to each such employee in respect of the remuneration paid by such person to such employee during the calendar year, on or before January 31 of the succeeding year, or, if his employment is terminated before the close of such calendar year, on the day on which the last payment of remuneration is made, a written statement showing the following:

(1) the name of such person,

(2) the name of the employee (and his social security account number if wages as defined in section 3121(a) have been paid),

(3) the total amount of wages as defined in section 3401(a), (4) the total amount deducted and withheld as tax under sec-

tion 3402.

(5) the total amount of wages as defined in section 3121(a), (6) the total amount deducted and withheld as tax under

section 3101, and

(7) the total amount of compensation with respect to which the tax imposed by section 3201 was deducted, and

(8) the total amount deducted as tax under section 3201.44

In the case of compensation paid for service as a member of a uniformed service, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section

⁴³ P.L. 90-248, sec. 502(c)(1)(A), amended subsection (a) by inserting "section 3101, 3201, or 3402" in lieu of "section 3101 or 3402", applicable in respect of remuneration paid after December 31, 1967.

⁴⁴ P.L. 90-248, sec. 502(c)(1)(C), inserted new paragraphs (7) and (8), applicable as in footnote 43 above.

and section 3121(i)(2). In the case of compensation paid for service as a volunteer or volunteer leader within the meaning of the Peace Corps Act, the statement shall show, in lieu of the amount required to be shown by paragraph (5), the total amount of wages as defined in section 3121(a), computed in accordance with such section and section 3121(i)(3). In the case of tips received by an employee in the course of his employment, the amounts required to be shown by paragraphs (3) and (5) shall include only such tips as are included in statements

furnished to the employer pursuant to section 6053(a).

(b) Special Rule as to Compensation of Members of Armed Forces.—In the case of compensation paid for service as a member of the Armed Forces, the statement required by subsection (a) shall be furnished if any tax was withheld during the calendar year under section 3402, or if any of the compensation paid during such year is includible in gross income under chapter 1, or if during the calendar year any amount was required to be withheld as tax under section 3101. In lieu of the amount required to be shown by paragraph (3) of subsection (a), such statement shall show as wages paid during the calendar year the amount of such compensation paid during the calendar year which is not excluded from gross income under chapter 1 (whether or not such compensation constituted wages as defined in section 3401(a)).

(c) Additional Requirements.—The statements required to be furnished pursuant to this section in respect of any remuneration shall be furnished at such other times, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe. The statements required under this section shall also show the proportion of the total amount withheld as tax under sections 3101 and 3201 45 which is for financing the cost of hospital insurance benefits under part A of title XVIII of the Social Security

Act.

(d) STATEMENTS TO CONSTITUTE INFORMATION RETURNS.—A duplicate of any statement made pursuant to this section and in accordance with regulations prescribed by the Secretary or his delegate shall, when required by such regulations, be filed with the Secretary or his delegate.

SEC. 6053. REPORTING OF TIPS.

(a) Reports by Employees.—Every employee who, in the course of his employment by an employer, receives in any calendar month tips which are wages (as defined in section 3121(a) or section 3401(a)) or which are compensation (as defined in section 3231(e)) shall report all such tips in one or more written statements furnished to his employer on or before the 10th day following such month. Such statements shall be furnished by the employee under such regulations, at such other times before such 10th day, and in such form and manner, as may be prescribed by the Secretary or his delegate.

(b) STATEMENTS FURNISHED BY EMPLOYERS.—If the tax imposed by section 3101 or section 3201 (as the case may be) with respect to tips reported by an employee pursuant to subsection (a) exceeds the tax which can be collected by the employer pursuant to section 3102 or

⁴⁵ P.L. 90-248, sec. 502(c) (2), inserted "sections 3101 and 3201" in lieu of "section 3101", applicable in respect of remuneration paid after December 31, 1967.

section 3202 (as the case may be), the employer shall furnish to the employee a written statement showing the amount of such excess. The statement required to be furnished pursuant to this subsection shall be furnished at such time, shall contain such other information, and shall be in such form as the Secretary or his delegate may by regulations prescribe. When required by such regulations, a duplicate of any such statement shall be filed with the Secretary or his delegate.

# SEC. 6061. SIGNING OF RETURNS AND OTHER DOCUMENTS.

Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

# SEC. 6064. SIGNATURE PRESUMED AUTHENTIC.

The fact than an individual's name is signed to a return, statement, or other document shall be prima facie evidence for all purposes that the return, statement, or other document was actually signed by him.

## SEC. 6065. VERIFICATION OF RETURNS.

(a) Penalties of Perjury.—Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) OATH.—The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

# SEC. 6071. TIME FOR FILING RETURNS AND OTHER DOCUMENTS.

(a) GENERAL RULE.—When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

# SEC. 6072. TIME FOR FILING INCOME TAX RETURNS.

(a) General Rule.—In the case of returns under section 6012, 6013, 6017, or 6031 (relating to income tax under subtitle A), returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year and returns made on the basis of a fiscal year shall be filed on or before the 15th day of the fourth month following the close of the fiscal year, except as otherwise provided in the following subsections of this section.

#### SEC. 6081. EXTENSION OF TIME FOR FILING RETURNS.

(a) GENERAL RULE.—The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

SEC. 6091. PLACE FOR FILING RETURNS OR OTHER DOCUMENTS.

(b) Tax Returns.—In the case of returns of tax required under authority of part II of this subchapter-

(1) Persons other than corporations.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), a return (other than a corporation return) shall be made to the Secretary or his delegate-

(i) in the internal revenue district in which is located the legal residence or principal place of business of the

person making the return, or

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) Exception.—Returns of—

(i) persons who have no legal residence or principal

place of business in any internal revenue district,

(ii) citizens of the United States whose principal place of abode for the period with respect to which the

return is filed is outside the United States,

(iii) persons who claim the benefits of section 911 (relating to earned income from sources without the United States), section 931 (relating to income from sources within possessions, of the United States), or section 933 (relating to income from sources within Puerto Rico), and

(iv) nonresident alien persons,

shall be made at such place as the Secretary or his delegate may by regulations designate.46

(2) Corporations.—

(A) GENERAL RULE.—Except as provided in subparagraph (B), a return of a corporation shall be made to the Secretary or his delegate-

(i) in the internal revenue district in which is located the principal place of business or principal office or

agency of the corporation, or

⁴⁶ P.L. 89-713, sec. 1(a), enacted November 2, 1966, amended paragraphs (1) and (2) of section 6091(b) in their entirety. Prior to this amendment, paragraphs (1) and (2) read

of section 6091(b) in their entirety. Prior to this amendment, paragraphs (1) and (2) constant follows:

"(1) Individuals.—Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may be regulations prescribe.

"(2) Corporations.—Returns of corporations shall be made to the Secretary or his delegate in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency of the corporation, or, if it has no principal place of business or principal office or agency in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe."

(ii) at a service center serving the internal revenue district referred to in clause (i),

as the Secretary or his delegate may by regulations designate.

(B) Exception.—Returns of—

(i) corporations which have no principal place of business or principal office or agency in any internal

revenue district,

(ii) corporations which claim the benefits of section 922 (relating to special deduction for Western Hemisphere trade corporations), section 931 (relating to income from sources within possessions of the United States), or section 941 (relating to the special deduction for China Trade Act corporations), and

(iii) foreign corporations, shall be made at such place as the Secretary or his delegate

may by regulations designate.47

# SEC. 6101. PERIOD COVERED BY RETURNS OR OTHER DOCUMENTS.

When not otherwise provided for by this title, the Secretary or his delegate may by regulations prescribe the period for which, or the date as of which, any return, statement, or other document required by this title or by regulations, shall be made.

# SEC. 6106. PUBLICITY OF UNEMPLOYMENT TAX RETURNS.

Returns filed with respect to the tax imposed by chapter 23 shall be open to inspection in the same manner, to the same extent, and subject to the same provisions of law, including penalties, as returns described in section 6103, except that paragraph (2) of subsections (a) and (b) of section 6103 and section 7213(a) (2) shall not apply.

## SEC. 6109. IDENTIFYING NUMBERS.

(a) Supplying of Identifying Numbers.—When required by reg-

ulations prescribed by the Secretary or his delegate:

(1) Inclusion in returns.—Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.

(2) FURNISHING NUMBER TO OTHER PERSONS.—Any person with respect to whom a return, statement, or other document is required under the authority of this title to be made by another person shall furnish to such other person such identifying number as may be prescribed for securing his proper identification.

(3) FURNISHING NUMBER OF ANOTHER PERSON.—Any person required under the authority of this title to make a return, statement, or other document with respect to another person shall request from such other person, and shall include in any such return, statement, or other document, such identifying number as may be prescribed for securing proper identification of such other person.

⁴⁷ See footnote 46 above.

(b) LIMITATION.—

(1) Except as provided in paragraph (2), a return of any person with respect to his liability for tax, or any statement or other document in support thereof, shall not be considered for purposes of paragraphs (2) and (3) of subsection (a) as a return, statement, or other document with respect to another person.

(2) For purposes of paragraphs (2) and (3) of subsection (a), a return of an estate or trust with respect to its liability for tax, and any statement or other document in support thereof, shall be considered as a return, statement, or other document with

respect to each beneficiary of such estate or trust.

(c) Requirement of Information.—For purposes of this section, the Secretary or his delegate is authorized to require such information as may be necessary to assign an identifying number to any person.

# CHAPTER 62—TIME AND PLACE FOR PAYING TAX

# SEC. 6151. TIME AND PLACE FOR PAYING TAX SHOWN ON RETURNS.

(a) GENERAL RULE.—Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the internal revenue officer with whom the return is filed,⁴⁸ and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

#### SEC. 6152. INSTALLMENT PAYMENT.

(a) PRIVILEGE TO ELECT TO MAKE INSTALLMENT PAYMENT.—

(3) EMPLOYEES SUBJECT TO UNEMPLOYMENT TAX.—[Repealed.]

(b) Dates Prescribed for Payments of Installments.—

(1) FOUR INSTALLMENTS.—In any case (other than payment of estimated income tax) in which the tax may be paid in four installments, the first installment shall be paid on the date prescribed for the payment of the tax, the second installment shall be paid on or before 3 months, the third installment on or before 6 months, and the fourth installment on or before 9 months, after such date.

(2) Two installments.—In any case (other than payment of estimated income tax) in which the tax may be paid in two installments, the first installment shall be paid on the date prescribed for the payment of the tax, and the second installment shall be

paid on or before 3 months after such date.

## SEC. 6155. PAYMENT ON NOTICE AND DEMAND.

(a) GENERAL RULE.—Upon receipt of notice and demand from the Secretary or his delegate, there shall be paid at the place and time stated in such notice the amount of any tax (including any interest, additional amounts, additions to tax, and assessable penalties) stated in such notice and demands.

⁴⁸ P.L. 89-713, sec. 1(b), enacted November 2, 1966, inserted "to the internal revenue officer with whom the return is filed" in lieu of "to the principal internal revenue officer for the internal revenue district in which the return is required to be filed".

#### SEC. 6161. EXTENSION OF TIME FOR PAYING TAX.

(a) Amount Determined by Taxpayer on Return.—

(1) GENERAL RULE.—The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

# CHAPTER 63—ASSESSMENTS

# SEC. 6205. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES.

(a) Adjustment of Tax.—

(1) GENERAL RULE.—If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of wages or compensation, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the Secretary or his delegate may by regulation prescribe.

(2) United States as employer.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate employer.

(3) Guam or american samoa as employer.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) DISTRICT OF COLUMBIA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate employer.

(b) Underpayments.—If less than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of wages or compensation and the underpayment cannot be adjusted under subsection (a) of this section, the amount of the underpayment shall be assessed and collected in such

manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

# CHAPTER 64—COLLECTION

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#### SEC. 6302, MODE OR TIME OF COLLECTION.

(a) Establishment by Regulations.—If the mode or time for collecting any tax is not provided for by this title, the Secretary or his

delegate may establish the same by regulations.
(b) DISCRETIONARY METHOD.—Whether or not the method of collecting any tax imposed by chapters 21, 31, 32, 33, section 4481 of chapter 36, section 4501(a) or 4511 of chapter 37, or section 4701 or 4721 of chapter 39 is specifically provided for by this title, any such tax may, under regulations prescribed by the Secretary or his delegate, be collected by means of returns, stamps, coupons, tickets, books, or such other reasonable devices or methods as may be necessary or

helpful in securing a complete and proper collection of the tax.

(c) Use of Government Depositaries.—The Secretary or his delegate may authorize Federal Reserve banks, and incorporated banks or trust companies which are depositaries or financial agents of the United States, to receive any tax imposed under the internal revenue laws, in such manner, at such times, and under such conditions as he may prescribe; and he shall prescribe the manner, times, and conditions under which the receipt of such tax by such banks and trust companies is to be treated as payment of such tax to the Secretary or his delegate.

#### SEC. 6313. FRACTIONAL PARTS OF A CENT.

In the payment of any tax imposed by this title not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

#### SEC. 6314. RECEIPT FOR TAXES.

(a) GENERAL RULE.—The Secretary or his delegate shall, upon request, give receipts for all sums collected by him, excepting only when the same are in payment for stamps sold and delivered; but no receipt shall be issued in lieu of a stamp representing a tax.

#### SEC. 6331. LEVY AND DISTRAINT.

(a) AUTHORITY OF SECRETARY OR DELEGATE.—If any person liable to pay any tax neglects or refuses to pay the same within 10 days after notice and demand, it shall be lawful for the Secretary or his delegate to collect such tax (and such further sum as shall be sufficient to cover the expenses of the levy) by levy upon all property and rights to property (except such property as is exempt under section 6334),

belonging to such person or on which there is a lien provided in this chapter for the payment of such tax. Levy may be made upon the accrued salary or wages of any officer, employee, or elected official, of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia, by serving a notice of levy on the employer (as defined in section 3401(d)) of such officer, employee, or elected official. If the Secretary or his delegate makes a finding that the collection of such tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Secretary or his delegate and, upon failure or refusal to pay such tax, collection thereof by levy shall be lawful without regard to the 10-day period provided in this section.

(b) SEIZURE AND SALE OF PROPERTY.—The term "levy" as used in this title includes the power of distraint and seizure by any means. A levy shall extend only to property possessed and obligations existing at the time thereof.49 In any case in which the Secretary or his delegate may levy upon property or rights to property, he may seize and sell such property or rights to property (whether real or personal, tangible

or intangible).

## SEC. 6334. PROPERTY EXEMPT FROM LEVY.

(a) Enumeration.—There shall be exempt from levy—

(4) Unemployment benefits.—Any amount payable to an individual with respect to his unemployment (including any portion thereof payable with respect to dependents) under an unemployment compensation law of the United States, of any State, or of the District of Columbia or of the Commonwealth of Puerto Rico.

(6) CERTAIN ANNUITY AND PENSION PAYMENTS.—Annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll (38 U.S.C. 562), and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

(7) Workmen's compensation.—Any amount payable to an individual as workmen's compensation (including any portion thereof payable with respect to dependents) under a workmen's compensation law of the United States, any State, the District of

Columbia, or the Commonwealth of Puerto Rico. 50

⁴⁶ P.L. 89-719, sec. 104(a), inserted the second sentence of section 6331(b). This amendment applies after November 2, 1966, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired. P.L. 89-719, sec. 114(b), provides that the amendments made by title I of such Act (including section 104(a)) shall not apply in any case—

(1) in which a lien or a title derived from enforcement of a lien held by the United States has been enforced by a civil action or suit which has become final by judgment, sale, or agreement before the date of enactment of this Act; or

(2) in which such amendments would—

(A) impair a priority enjoyed by any person (other than the United States) holding a lien or interest prior to the date of enactment of this Act;

(B) operate to increase the liability of any such person; or

(C) shorten the time for bringing suit with respect to transactions occurring before the date of enactment of this Act.

(50 P.L. 89-719, sec. 104(c), amended section 6334(a) by deleting "or territory" where it appeared after "State" in paragraph (4) and by adding paragraphs (6) and (7). For applicability, see footnote 49 above.

# CHAPTER 65—ABATEMENT CREDITS AND REFUNDS

# SEC. 6413. SPECIAL RULES APPLICABLE TO CERTAIN EMPLOYMENT TAXES

(a) ADJUSTMENT OF TAX.—

(1) GENERAL RULE.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid with respect to any payment of remuneration, proper adjustments, with respect to both the tax and the amount to be deducted, shall be made, without interest, in such manner and at such times as the

Secretary or his delegate may by regulations prescribe.

(2) United states as employer.—For purposes of this subsection, in the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall be deemed a separate

employer.

3) Guam or american samoa as employer.—For purposes of this subsection, in the case of remuneration received during any calendar year from the Government of Guam, the Government of American Samoa, a political subdivision of either, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, the Governor of Guam, the Governor of American Samoa, and each agent designated by either who makes a return pursuant to section 3125 shall be deemed a separate employer.

(4) DISTRICT OF COLUMBIA AS EMPLOYER.—For purposes of this subsection, in the case of remuneration received during any calendar year from the District of Columbia or any instrumentality which is wholly owned thereby, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125 shall be deemed a separate

employer.

(b) OVERPAYMENTS OF CERTAIN EMPLOYMENT TAXES.—If more than the correct amount of tax imposed by section 3101, 3111, 3201, 3221, or 3402 is paid or deducted with respect to any payment of remunera-tion and the overpayment cannot be adjusted under subsection (a) of this section, the amount of the overpayment shall be refunded in such manner and at such times (subject to the statute of limitations properly applicable thereto) as the Secretary or his delegate may by regulations prescribe.

(c) Special Refunds.—

(1) In general.—If by reason of any employee receiving wages from more than one employer during a calendar year after the calendar year 1950 and prior to the calendar year 1955, the wages received by him during such year exceed \$3,600, the employee shall be entitled (subject to the provisions of section 31(b)) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 1400 of the Internal Revenue Code of 1939 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first \$3,600 of such wages received; or if by reason of an employee receiving wages from more than one employer (A) during any calendar year after the calendar year 1954 and prior to the calendar year 1959, the wages received by him during such year exceed \$4,200, or (B) during any calendar year after the calendar year 1958 and prior to the calendar year 1966, the wages received by him during such year exceed \$4,800 or (C) during any calendar year after the calendar year 1965 and prior to the calendar year 1968,51 the wages received by him during such year exceed \$6,600, or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed \$7,800,52 the employee shall be entitled (subject to the provisions of section 31(b) to a credit or refund of any amount of tax, with respect to such wages, imposed by section 3101 and deducted from the employee's wages (whether or not paid to the Secretary or his delegate), which exceeds the tax with respect to the first \$4,200 of such wages received in such calendar year after 1954 and before 1959, or which exceeds the tax with respect to the first \$4,800 of such wages received in such calendar year after 1958 and before 1966, or which exceeds the tax with respect to the first \$6,600 of such wages received in such calendar year after 1965 and before 1968, or which exceeds the tax with respect to the first \$7,800 of such wages received in such calendar vear after 1967.53

(2) APPLICABILITY IN CASE OF FEDERAL AND STATE EMPLOYEES, EMPLOYEES OF CERTAIN FOREIGN CORPORATIONS, AND GOVERNMENTAL EMPLOYEES IN GUAM, AMERICAN SAMOA, AND THE DISTRICT OF COLUMBIA.

(A) Federal employees.—In the case of remuneration received from the United States or a wholly-owned instrumentality thereof during any calendar year, each head of a Federal agency or instrumentality who makes a return pursuant to section 3122 and each agent, designated by the head of a Federal agency or instrumentality, who makes a return pursuant to such section shall, for purposes of this subsection, be deemed a separate employer, and the term "wages" includes for purposes of this subsection the amount, not to exceed \$3,600 for the calendar year 1951, 1952, 1953, or 1954, \$4,200 for the calendar year 1955, 1956, 1957, or 1958, \$4,800 for the calendar year 1959, 1960, 1961, 1962, 1963, 1964, or 1965, \$6,600 for the calendar year 1966 or 1967, or \$7,800 for any calendar year after 1967, 54 determined by each such head or agent as constituting wages paid to an employee.

(B) STATE EMPLOYEES.—For purposes of this subsection, in the case of remuneration received during any calendar year, the term "wages" includes such remuneration for services

EP.L. 90-248, sec. 108(b) (5) (A), inserted "and prior to the calendar year 1968", applicable only with respect to remuneration paid after December 1967.

EP.L. 90-248, sec. 108(b) (5) (B), inserted "or (D) during any calendar year after the calendar year 1967, the wages received by him during such year exceed \$7,800," applicable as in footnote 51 above.

EP.L. 90-248, sec. 108(b) (5) (C), inserted "and before 1968, or which exceeds the tax with respect to the first \$7,800 of such wages received in such calendar year after 1967", applicable as in footnote 51 above.

EP.L. 90-248, sec. 108(b) (6), amended section 6413(c) (2) (A) by inserting "\$6,600 for the calendar year 1966 or 1967, or \$7,800 for any calendar year after 1967", in lieu of "or \$6,600 for any calendar year after 1965".

covered by an agreement made pursuant to section 218 of the Social Security Act as would be wages if such services constituted employment; the term "employer" includes a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing; the term "tax" or "tax imposed by section 3101" includes, in the case of services covered by an agreement made pursuant to section 218 of the Social Security Act, an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of an agreement made pursuant to section 218 of the Social Security

Act has been paid to the Secretary.

(C) EMPLOYEES OF CERTAIN FOREIGN CORPORATIONS.—For purposes of paragraph (1) of this subsection, the term "wages" includes such remuneration for services covered by an agreement made pursuant to section 3121(1) as would be wages if such services constituted employment; the term "employer" includes any domestic corporation which has entered into an agreement pursuant to section 3121(1); the term "tax" or "tax imposed by section 3101," includes, in the case of services covered by an agreement entered into pursuant to section 3121(1), an amount equivalent to the tax which would be imposed by section 3101, if such services constituted employment as defined in section 3121; and the provisions of paragraph (1) of this subsection shall apply whether or not any amount deducted from the employee's remuneration as a result of the agreement entered into pursuant to section 3121(1) has been paid to the Secretary or his delegate.

(D) GOVERNMENTAL EMPLOYEES IN GUAM.—In the case of remuneration received from the Government of Guam or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of Guam and each agent designated by him who makes a return pursuant to section 3125(a) shall, for purposes of this subsection

be deemed a separate employer.

(E) Governmental employees in american samoa.—In the case of remuneration received from the Government of American Samoa or any political subdivision thereof or from any instrumentality of any one or more of the foregoing which is wholly owned thereby, during any calendar year, the Governor of American Samoa and each agent designated by him who makes a return pursuant to section 3125(b) shall, for purposes of this subsection, be deemed a separate employer.

(F) GOVERNMENT EMPLOYEES IN THE DISTRICT OF COLUMBIA.—In the case of remuneration received from the District of Columbia or any instrumentality wholly owned thereby, during any calendar year, the Commissioners of the District of Columbia and each agent designated by them who makes a return pursuant to section 3125(c) shall, for purposes of

this subsection, be deemed a separate employer.

(3) APPLICABILITY WITH RESPECT TO COMPENSATION OF EM-PLOYEES SUBJECT TO THE RAILROAD RETIREMENT TAX ACT.—In the case of any individual who, during any calendar year after 1967, receives wages from one or more employers and also receives compensation which is subject to the tax imposed by section 3201 or 3211, such compensation shall, solely for purposes of applying paragraph (1) with respect to the tax imposed by section 3101(b), be treated as wages received from an employer with respect to which the tax imposed by section 3101(b) was deducted. 55

(d) REFUND OR CREDIT OF FEDERAL UNEMPLOYMENT TAX.—Any credit allowable under section 3302, to the extent not previously allowed, shall be considered an overpayment, but no interest shall be

allowed, or paid with respect to such overpayment.

## CHAPTER 66—LIMITATIONS

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#### SEC. 6501. LIMITATIONS ON ASSESSMENT AND COLLECTION.

(a) General Rule.—Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period.

(b) TIME RETURN DEEMED FILED.—

(1) Early return.—For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 21, or 24,56 filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) RETURN OF CERTAIN EMPLOYMENT TAXES AND TAX IMPOSED BY CHAPTER 3 57.—For purposes of this section, if a return of tax imposed by chapter 3, 21, or 24 58 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of

such calendar year.

(3) RETURN EXECUTED BY SECRETARY.—Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary or his delegate pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

⁵⁵ P.L. 90-248, sec. 502(a), amended section 6413(c) by adding new paragraph (3).
55 P.L. 89-809, sec. 105(f)(3)(A), enacted November 13, 1966, inserted in paragraphs (1)
and (2) "chapter 3, 21, or 24" in lieu of "chapter 21 or 24".
57 P.L. 89-809, sec. 105(f)(3)(B), inserted "and tax imposed by chapter 3".
58 See footnote 56 above.

(c) EXCEPTIONS.—

(1) FALSE RETURN.—In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without

assessment, at any time.

(2) WILLFUL ATTEMPT TO EVADE TAX.—In the case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No Return.—In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such

tax may be begun without assessment, at any time.

(4) EXTENSION BY AGREEMENT.—Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary or his delegate and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

#### SEC. 6502. COLLECTION AFTER ASSESSMENT.

(a) Length of Period.—Where the assessment of any tax imposed by this title has been made within the period of limitation properly applicable thereto, such tax may be collected by levy or by a proceeding in court, but only if the levy is made or the proceeding begun—

(1) within 6 years after the assessment of the tax, or

(2) prior to the expiration of any period for collection agreed upon in writing by the Secretary or his delegate and the taxpayer before the expiration of such 6-year period (or, if there is a release of levy under section 6343 after such 6-year period, then before such release).

The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. The period provided by this subsection during which a tax may be collected by levy shall not be extended or curtailed by reason of a

judgment against the taxpayer. 59

(b) DATE WHEN LEVY IS CONSIDERED MADE.—The date on which a levy on property or rights to property is made shall be the date on which the notice of seizure provided in section 6335(a) is given.

# SEC. 6511. LIMITATIONS ON CREDIT OR REFUND.

(a) Period of Limitation on Filing Claim.—Claim for credit or refund of an overpayment of any tax imposed by this title in respect of which tax the taxpayer is required to file a return shall be filed by

⁵⁹ P.L. 89-719, sec. 113(b), added the sentence at the end of section 6502(a). This amendment applies after November 2, 1966, regardless of when a lien or a title of the United States arose or when the lien or interest of any other person was acquired. For exceptions, see footnote 49, this title.

the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid, whichever of such periods expires the later, or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. Claim for credit or refund of an overpayment of any tax imposed by this title which is required to be paid by means of a stamp shall be filed by the taxpayer within 3 years from the time the tax was paid.

(b) LIMITATIONS ON ALLOWANCE OF CREDITS AND REFUNDS.—

(1) FILING OF CLAIM WITHIN PRESCRIBED PERIOD.—No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in subsection (a) for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(2) LIMIT ON AMOUNT OF CREDIT OR REFUND.

(A) LIMIT WHERE CLAIM FILED WITHIN 3-YEAR PERIOD.—If the claim was filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the period immediately preceding the filing of the claim, equal to 3 years plus the period of any extension of time for filing the return. If the tax was required to be paid by means of a stamp, the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim.

(B) Limit where claim not filed within 3-YEAR PERIOD.—If the claim was not filed within such 3-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the

filing of the claim.

(C) LIMIT IF NO CLAIM FILED.—If no claim was filed, the credit or refund shall not exceed the amount which would be allowable under subparagraph (A) or (B), as the case may be, if claim was filed on the date the credit or refund is allowed.

(d) Special Rules Applicable to Income Taxes.—

(5) Special period of limitation with respect to self-employment tax in certain cases.—If the claim for credit or refund relates to an overpayment of the tax imposed by chapter 2 (relating to the tax on self-employment income) attributable to an agreement, or modification of an agreement, made pursuant to section 218 of the Social Security Act (relating to coverage of State and local employees), and if the allowance of a credit or refund of such overpayment is otherwise prevented by the operation of any law or rule of law other than section 7122 (relating to compromises), such credit or refund may be allowed or made if claim therefor is filed on or before the later of the following dates: (A) the last day of the second year after the calendar year in which such agreement (or modification) is agreed to by the State and the Secretary of Health, Education, and Welfare, or (B) December 31, 1965.

#### SEC. 6513. TIME RETURN DEEMED FILED AND TAX CONSIDERED PAID.

(c) RETURN AND PAYMENT OF SOCIAL SECURITY TAXES AND INCOME TAX WITHHOLDING.—Notwithstanding subsection (a), for purposes of section 6511 with respect to any tax imposed by chapter 3, 21, or 24 ⁶⁰—

(1) If a return for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such succeeding

calendar year; and

(2) If a tax with respect to remuneration or other amount ⁶¹ paid during any period ending with or within a calendar year is paid before April 15 of the succeeding calendar year, such tax shall be considered paid on April 15 of such succeeding calendar year.

## SEC. 6521. MITIGATION OF EFFECT OF LIMITATION IN CASE OF RE-LATED TAXES UNDER DIFFERENT CHAPTERS.

(a) Self-Employment Tax and Tax on Wages.—In the case of the tax imposed by chapter 2 (relating to tax on self-employment income) and the tax imposed by section 3101 (relating to tax on employees under the Federal Insurance Contributions Act)—

(1) If an amount is erroneously treated as self-employment income, or if an amount is erroneously treated as wages, and

(2) If the correction of the error would require an assessment

of one such tax and the refund or credit of the other tax, and
(3) If at any time the correction of the error is authorized as

to one such tax but is prevented as to the other tax by any law or rule of law (other than section 7122, relating to compromises), then, if the correction authorized is made, the amount of the assessment, or the amount of the credit or refund, as the case may be, authorized as to the one tax shall be reduced by the amount of the credit or refund, or the amount of the assessment, as the case may be, which would be required with respect to such other tax for the correction of the error if such credit or refund, or such assessment, of such other tax were not prevented by any law or rule of law (other than section 7122 relating to compromises).

(b) Definitions.—For purposes of subsection (a), the terms "self-employment income" and "wages" shall have the same meaning as

when used in section 1402(b).

#### CHAPTER 67—INTEREST

# SEC. 6601. INTEREST ON UNDERPAYMENT, NONPAYMENT, OR EXTENSIONS OF TIME FOR PAYMENT, OF TAX.

(a) GENERAL RULE.—If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per

[©] P.L. 89-809, sec. 105(f)(2)(A), enacted November 13, 1966, inserted "chapter 3, 21, or 24" in lieu of "chapter 21 or 24".

© P.L. 89-809, sec. 105(f)(2)(B), inserted "remuneration or other amount" in lieu of "remuneration".

annum shall be paid for the period from such last date to the date paid.

(c) LAST DATE PRESCRIBED FOR PAYMENT.—For purposes of this section, the last date prescribed for payment of the tax shall be determined under chapter 62 with the application of the following rules:

(1) EXTENSIONS OF TIME DISREGARDED.—The last date prescribed for payment shall be determined without regard to any extension

of time for payment.

(2) Installment payments.—In the case of an election under

section 6152(a) to pay the tax in installments—

(A) The date prescribed for payment of each installment of the tax shown on the return shall be determined under section 6152(b), and

(B) The last date prescribed for payment of the first installment shall be deemed the last date prescribed for payment

of any portion of the tax not shown on the return.

(3) Jedpardy.—The last date prescribed for payment shall be determined without regard to any notice and demand for payment issued, by reason of jeopardy (as provided in chapter 70), prior

to the last date otherwise prescribed for such payment.

(4) Last date for payment not otherwise prescribed.—In the case of taxes payable by stamp and in all other cases in which the last date for payment is not otherwise prescribed, the last date for payment shall be deemed to be the date the liability for tax arises (and in no event shall be later than the date notice and demand for the tax is made by the Secretary or his delegate).

(f) Applicable Rules.—Except as otherwise provided in this title—

(1) INTEREST TREATED AS TAX.—Interest prescribed under this section on any tax shall be paid upon notice and demand, and shall be assessed, collected, and paid in the same manner as taxes. Any reference in this title (except subchapter B of chapter 63, relating to deficiency procedures) to any tax imposed by this title shall be deemed also to refer to interest imposed by this section on such tax.

(2) No interest on interest.—No interest under this section

shall be imposed on the interest provided by this section.

(3) Interest on penalties, additional amounts, or addition to the tax.—Interest shall be imposed under subsection (a) in respect of any assessable penalty, additional amount, or addition to the tax only if such assessable penalty, additional amount, or addition to the tax is not paid within 10 days from the date of notice and demand therefor, and in such case interest shall be imposed only for the period from the date of the notice and demand to the date of payment.

(4) PAYMENTS MADE WITHIN 10 DAYS AFTER NOTICE AND DE-MAND.—If notice and demand is made for payment of any amount, and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(h) Limitation on Assessment on Collection.—Interest prescribed under this section on any tax may be assessed and collected at any time during the period within which the tax to which such interest relates may be collected.

# CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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#### SEC. 6651. FAILURE TO FILE TAX RETURN.

(a) Addition to the Tax.—In case of failure to file any return required under authority of subchapter A of chapter 61 (other than part III thereof), of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate.

(b) PENALTY IMPOSED ON NET AMOUNT DUE.—For purposes of subsection (a), the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the

return.62

# SEC. 6652. FAILURE TO FILE CERTAIN INFORMATION RETURNS.

(a) * * *.

(b) OTHER RETURNS.—In the case of each failure to file a statement of a payment to another person required under authority of section 6041 (relating to certain information at source), section 6042(a) (2) (relating to payments of dividends aggregating less than \$10), section 6044(a) (2) (relating to payments of patronage dividends aggregating

⁶² P.L. 89-97, sec. 331(b)(3) provided that for purposes of sec. 6651, the amount of tax required to be shown on the return shall not include tax under sec. 1401 of the Internal Revenue Code which is due for any taxable year ending before January 1, 1966, solely by reason of the filing of a certificate which is effective under sec. 1402(e)(5).

less than \$10), section 6049(a) (2) (relating to payments of interest aggregating less than \$10), section 6049(a) (3) (relating to other payments of interest by corporations), or section 6051(d) (relating to information returns with respect to income tax withheld), and in the case of each failure to furnish a statement required by section 6053(b) (relating to statements furnished by employers with respect to tips), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not to willful neglect, there shall be paid (upon notice and demand by the Secretary or his delegate and in the same manner as tax) by the person failing to so file the statement, \$1 for each such statement not so filed, but the total amount imposed on the delinquent person for all such failures during the calendar year shall not exceed \$1,000.

(c) Failure To Report Tips.—In the case of failure by an employee to report to his employer on the date and in the manner prescribed therefor any amount of tips required to be so reported by section 6053(a) which are wages (as defined in section 3121(a)), or which are compensation (as defined in section 3231(e)) unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be paid by the employee, in addition to the tax imposed by section 3101 or section 3201 (as the case may be) with respect to the amount of tips which he so failed to report, an amount

equal to 50 percent of such tax.

(d) Alcohol and Tobacco Taxes.—For penalties for failure to file certain information returns with respect to alcohol and tobacco taxes, see, generally, subtitle E.

# SEC. 6656. FAILURE TO MAKE DEPOSIT OF TAXES.

(a) Penalty.—In case of failure by any person required by this title or by regulation of the Secretary or his delegate under this title to deposit on the date prescribed therefor any amount of tax imposed by this title in such government depositary as is authorized under section 6302(c) to receive such deposit, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be imposed upon such person a penalty of 1 percent of the amount of the underpayment if the failure is for not more than 1 month, with an additional 1 percent for each additional month or fraction thereof during which such failure continues, not exceeding 6 percent in the aggregate. For purposes of this subsection, the term "underpayment" means the excess of the amount of the tax required to be so deposited over the amount, if any, thereof deposited on or before the date prescribed therefor.

(b) PENALTY NOT IMPOSED AFTER DUE DATE FOR RETURN.—For purposes of subsection (a), the failure shall be deemed not to continue beyond the last date (determined without regard to any extension of time) prescribed for payment of the tax required to be deposited or

beyond the date the tax is paid, whichever is earlier.

# SEC. 6659. APPLICABLE RULES.

(a) Additions Treated as Tax.—Except as otherwise provided in this title—

(1) The additions to the tax, additional amounts, and penalties provided by this chapter shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes;

(2) Any reference in this title to "tax" imposed by this title shall be deemed also to refer to the additions to the tax, addi-

tional amounts, and penalties provided by this chapter.

(b) Additions to Tax for Failure to File Return or Pay Tax.—Any addition under section 6651 or section 6653 to a tax imposed by another subtitle of this title shall be considered a part of such tax for the purpose of applying the provisions of this title relating to the assessment and collection of such tax (including the provisions of subchapter B of chapter 63, relating to deficiency procedures for income, estate, and gift taxes).

## SEC. 6674. FRAUDULENT STATEMENT OR FAILURE TO FURNISH STATE-MENT TO EMPLOYEE.

In addition to the criminal penalty provided by section 7204, any person required under the provisions of section 6051 or 6053(b) to furnish a statement to an employee who willfully furnishes a false or fraudulent statement, or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051 or 6053(b), or regulations prescribed thereunder, shall for each such failure be subject to a penalty under this subchapter of \$50, which shall be assessed and collected in the same manner as the tax on employers imposed by section 3111.

# SEC. 6676. FAILURE TO SUPPLY IDENTIFYING NUMBERS.

(a) Civil Penalty.—If any person who is required by regulations prescribed under section 6109—

(1) to include his identifying number in any return, statement,

or other document,

(2) to furnish his identifying number to another person, or

(3) to include in any return, statement, or other document made with respect to another person the identifying number of such other person,

fails to comply with such requirement at the time prescribed by such regulations, such person shall pay a penalty of \$5 for each such failure, unless it is shown that such failure is due to reasonable cause.

(b) Deficiency Procedures Not To Apply.—Subchapter B of chapter 63 (relating to deficiency procedures for income, estate, and gift taxes) shall not apply in respect of the assessment or collection of any penalty imposed by subsection (a).

# CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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#### SEC. 7201. ATTEMPT TO EVADE OR DEFEAT TAX.

Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

#### SEC. 7202. WILLFUL FAILURE TO COLLECT OR PAY OVER TAX.

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

# SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return (other than a return required under authority of section 6015 or section 6016), keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 1 year, or both, together with the costs of prosecution.

#### SEC. 7204. FRAUDULENT STATEMENT OR FAILURE TO MAKE STATE-MENT TO EMPLOYEES.

In lieu of any other penalty provided by law (except the penalty provided by section 6674) any person required under the provisions of section 6051 to furnish a statement who willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under section 6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

# SEC. 7206. FRAUD AND FALSE STATEMENTS.

Any person who-

(1) Declaration under penalties of perjury.—Willfully makes and subscribes any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not be-

lieve to be true and correct as to every material matter; or

(2) AID OR ASSISTANCE.—Willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, of a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim, or document;

shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000, or imprisoned not more than 3 years; or both, together with the costs of prosecution.

SEC. 7207. FRAUDULENT RETURNS, STATEMENTS, OR OTHER DOCU-MENTS.

Any person who willfully delivers or discloses to the Secretary or his delegate any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047 (b) or (c) to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

# CHAPTER 78—DISCOVERY OF LIABILITY AND ENFORCEMENT OF TITLE

SEC. 7651. ADMINISTRATION AND COLLECTION OF TAXES IN POSSESSIONS.

Except as otherwise provided in this subchapter and in sections 4705(b), 4735, and 4762 (relating to taxes on narcotic drugs and marihuana), and except as otherwise provided in section 28(a) of the Revised Organic Act of the Virgin Islands and section 30 of the Organic Act of Guam (relating to the covering of the proceeds of certain taxes into the treasuries of the Virgin Islands and Guam,

respectively)—

(1) APPLICABILITY OF ADMINISTRATIVE PROVISIONS.—All provisions of the laws of the United States applicable to the assessment and collection of any tax imposed by this title or of any other liability arising under this title (including penalties) shall, in respect of such tax or liability, extend to and be applicable in any possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(2) Tax imposed in possession.—In the case of any tax which is imposed by this title in any possession of the United States—

(A) INTERNAL REVENUE COLLECTIONS.—Such tax shall be collected under the direction of the Secretary or his delegate, and shall be paid into the Treasury of the United States as internal revenue

collections; and

(B) APPLICABLE LAWS.—All provisions of the laws of the United States applicable to the administration, collection, and enforcement of such tax (including penalties) shall, in respect of such tax, extend to and be applicable in such possession of the United States in the same manner and to the same extent as if such possession were a State, and as if the term "United States" when used in a geographical sense included such possession.

(3) Other laws relating to possessions.—This section shall apply notwithstanding any other provision of law relating to any possession of the United States.

(4) Canal zone.—For purposes of this section, the term "possession

of the United States" includes the Canal Zone.

(5) VIRGIN ISLANDS.—

(A) For purposes of this section, the reference in section 28(a) of the Revised Organic Act of the Virgin Islands to "any tax specified in section 3811 of the Internal Revenue Code" shall be deemed to refer to any tax imposed by chapter 2 or by chapter 21.

(B) For purposes of this title, section 28(a) of the Revised Organic Act of the Virgin Islands shall be effective as if such section had been enacted subsequent to the enactment of this title.

#### SEC. 7655. CROSS REFERENCES.

(a) Imposition of Tax in Possessions.—

For provisions imposing tax in possessions, see

(1) Chapter 2, relating to self-employment tax;
(2) Chapter 21, relating to the tax under the Federal Insurance Con-

tributions Act;

(3) Parts I and III of subchapter A of chapter 39, relating to taxes in respect of narcotic drugs;

(4) Parts II and III of subchapter A of chapter 39, relating to taxes

in respect of marihuana;

(5) Subchapter A of chapter 37, relating to tax on sugar.

(b) OTHER PROVISIONS.—

For other provisions relating to possessions of the United States, see—

(1) Section 933, relating to income tax on residents of Puerto Rico;
(2) Section 6418(b), relating to exportation of sugar to Puerto Rico.

# **CHAPTER 79—DEFINITIONS**

#### SEC. 7701. DEFINITIONS.

(a) When used in this title, where not otherwise distinctly ex-

pressed or manifestly incompatible with the intent thereof-

(1) Person.—The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(3) Corporation.—The term "corporation" includes associa-

tions, joint-stock companies, and insurance companies.

(4) Domestic.—The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(7) STOCK.—The term "stock" includes shares in an association, joint-stock company, or insurance company.

(9) UNITED STATES.—The term "United States" when used in a geographical sense includes only the States and the District of Columbia.

(10) STATE.—The term "State" shall be construed to include the District of Columbia, where such construction is necessary to carry out the provisions of this title.

(11) SECRETARY.—The term "Secretary" means the Secretary of

the Treasury.

# CHAPTER 80—GENERAL RULES

#### SEC. 7805. RULES AND REGULATIONS.

- (a) Authorization.—Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.
- (c) PREPARATION AND DISTRIBUTION OF REGULATIONS, FORMS, STAMPS, AND OTHER MATTERS.—The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

# SEC. 7851. APPLICABILITY OF REVENUE LAWS.

(a) GENERAL RULES.—Except as otherwise provided in any section of this title—

(1) SUBTITLE A.—

- (A) Chapters 1, 2, 4, and 6 of this title shall apply only with respect to taxable years beginning after December 31, 1953, and ending after the date of enactment of this title, and with respect to such taxable years, chapters 1 (except sections 143 and 144) and 2, and section 3801, of the Internal Revenue Code of 1939 are hereby repealed.
- (C) Any provision of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953), or in terms of taxable years ending after a specific date (occurring after December 31, 1953), shall apply to taxable years ending after such specific date. Each such provision shall, in the case of a taxable year subject to the Internal Revenue Code of 1939, be deemed to be included in the Internal Revenue Code of 1939, but shall be applicable only to taxable years ending after such specific date. The provisions of the Internal Revenue Code of 1939 superseded by provisions of subtitle A of this title the applicability of which is stated in terms of a specific date (occurring after December 31, 1953) shall be deemed to be included in subtitle A of this title, but shall be applicable only to the period prior to the taking effect of the corresponding provision of subtitle A.

- (3) Subtifie C.—Subtitle C of this title shall apply only with respect to remuneration paid after December 31, 1954, except that chapter 22 of such subtitle shall apply only with respect to remuneration paid after December 31, 1954, which is for services performed after such date. Chapter 9 of the Internal Revenue Code of 1939 is hereby repealed with respect to remuneration paid after December 31, 1954, except that subchapter B of such chapter (and subchapter E of such chapter to the extent it relates to subchapter B) shall remain in force and effect with respect to remuneration paid after December 31, 1954, for services performed on or before such date.
- (e) Reference to Other Provisions.—For the purpose of applying the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 to any period, any reference in either such code to another provision of the Internal Revenue Code of 1939 or the Internal Revenue Code of 1954 which is not then applicable to such period shall be deemed a reference to the corresponding provision of the other code which is then applicable to such period.

## SEC. 7852. OTHER APPLICABLE RULES.

(b) Reference in Other Laws to Internal Revenue Code of 1939.—Any reference in any other law of the United States or in any Executive order to any provision of the Internal Revenue Code of 1939 shall, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, be deemed also to refer to the corresponding provision of this title.

# PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954 PRIOR TO THE SOCIAL SECURITY ACT AMENDMENTS OF 1967

SEC. 401. QUALIFIED PENSION, PROFIT-SHARING, AND STOCK BONUS PLANS.

(c) Definitions and Rules Relating to Self-Employed Individuals and Owner-Employees.

(1) Employee.—* * * (2) Earned income.—

(A) IN GENERAL.—The term "earned income" means the net earnings from self-employment (as defined in section 1402(a)) to the extent that such net earnings constitute earned income (as defined in section 911(b) but determined with the application of subparagraph (B)), but such net earnings shall be determined—

(i) without regard to paragraphs (4) and (5) of sec-

tion 1402(c),
(ii) in the case of any individual who is treated as an employee under sections 3121(d)(3)(A), (C), or (D), without regard to paragraph (2) of section 1402(c), and

(iii) without regard to items which are not included in gross income for purposes of this chapter, and the deductions properly allocable to or chargeable against such items.

For purposes of this subparagraph, sections 911(b) and 1402, as in effect for a taxable year ending on December 31, 1962, and subparagraph (B), as in effect for a taxable year beginning on January 1, 1963, shall be treated as having been in effect for all taxable years ending before such date.

(B) EARNED INCOME WHEN BOTH PERSONAL SERVICES AND CAPITAL ARE MATERIAL INCOME-PRODUCING FACTORS.—In applying section 911(b) for purposes of subparagraph (A), in the case of an individual who is an employee within the meaning of paragraph (1) and who is engaged in a trade or business in which both personal services and capital are material income-producing factors and with respect to which the individual actually renders personal services on a full-time, or substantially full-time, basis, so much of his share of the net profits of such trade or business as does not exceed \$2,500 shall be considered as earned income. In the case of any such individual who is engaged in more than one trade or business with respect to which he actually renders substantial personal services, if with respect to all such trades or businesses he actually renders personal services on a full-time, or substantially full-time, basis, there shall be considered as earned income with respect to the trades or businesses in which both personal services and capital are material income-producing factors-

(i) so much of his share of the net profits of such trades or businesses as does not exceed \$2,500, reduced by

(ii) his share of the net profits of any trade or business in which only personal services is a material income-producing factor.

The preceding sentences shall not be construed to reduce the share of net profits of any trade or business which under the second sentence of section 911(b) would be considered as earned income of any such individual.

# SEC. 1402. DEFINITIONS.

(e) Ministers, Members of Religious Orders, and Christian Science Practitioners.—

(1) Waiver certificate.—Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) certifying that he elects to have the insurance system established by title II of the Social Security Act extended to service described in subsection (c) (4) or (c) (5) performed by him.

(2) Time for filing certificate.—Any individual who desires to file a certificate pursuant to paragraph (1) must file such certificate on or before whichever of the following dates is later; (A) the due date of the return (including any extension thereof) for his second taxable year ending after 1954 for which he has net earnings from self-employment (computed without regard to subsections (c) (4) and (c) (5)) of \$400 or more, any part of which was derived from the performance of service described in subsection (c) (4) or (c) (5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1963.

(3)(A) Effective date of certificate.—A certificate filed pursuant to this subsection shall be effective for the taxable year immediately preceding the earliest taxable year for which, at the time the certificate is filed, the period for filing a return (including any extension thereof) has not expired, and for all succeeding taxable years. An election made pursuant to this subsection

shall be irrevocable.

(B) Notwithstanding the first sentence of subparagraph (A), if an individual filed a certificate on or before the date of enactment of this subparagraph which (but for this subparagraph) is effective only for the first taxable year ending after 1956 and all succeeding taxable years, such certificate shall be effective for his first taxable year ending after 1955 and all succeeding taxable years if—

(i) such individual files a supplemental certificate after the date of enactment of this subparagraph and on or before

April 15, 1962,

(ii) the tax under section 1401 in respect of all such individual's self-employment income (except for underpayments of tax attributable to errors made in good faith) for his first taxable year ending after 1955 is paid on or before April 15, 1962, and

(iii) in any case where refund has been made of any such tax which (but for this subparagraph) is an overpayment, the amount refunded (including any interest paid under sec-

tion 6611) is repaid on or before April 15, 1962.

The provisions of section 6401 shall not apply to any payment or

repayment described in this subparagraph.

(Č) Notwithstanding the first sentence of subparagraph (A), if an individual files a certificate after the date of enactment of this subparagraph and on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1962, such certificate shall be effective for his first taxable year ending after 1961 and all succeeding years.

(D) Notwithstanding the first sentence of subparagraph (A), if an individual files a certificate after the date of the enactment of this subparagraph and on or before the due date of the return (including any extension thereof) for his second taxable year ending after 1963, such certificate shall be effective for his first taxable year ending after 1962 and all

succeeding years.

(E) For purposes of sections 6015 and 6654, a waiver certificate described in paragraph (1) shall be treated as taking effect on the first day of the first taxable year beginning after the date on which such certificate is filed.⁶³

(4) TREATMENT OF CERTAIN REMUNERATION PAID IN 1955 AND

1956 AS WAGES.—If-

(A) in 1955 or 1956 an individual was paid remuneration for service described in section 3121(b)(8)(A) which was erroneously treated by the organization employing him (under a certificate filed by such organization pursuant to section 3121(k) or the corresponding section of prior law) as employment (within the meaning of chapter 21), and

(B) on or before the date of the enactment of this paragraph the taxes imposed by sections 3101 and 3111 were paid (in good faith and upon the assumption that the insurance system established by title II of the Social Security Act had been extended to such service) with respect to any part of the remuneration paid to such individual for such service,

then the remuneration with respect to which such taxes were paid, and with respect to which no credit or refund of such taxes (other than a credit or refund which would be allowable if such service had constituted employment) has been obtained on or before the date of the enactment of this paragraph, shall be deemed (for purposes of this chapter and chapter 21) to constitute remuneration paid for employment and not net earnings from self-employment.

(5) OPTONAL PROVISION FOR CERTAIN CERTIFICATES FILED ON OR BEFORE APRIL 15, 1967.—Notwithstanding any other provision of this section, in any case where an individual has derived earnings in any taxable year ending after 1954 from the performance of service described in subsection (c) (4), or in subsection (c) (5) insofar as it related to the performance of service by an individual in the exercise of his profession as a Christian Science practitioner, and has reported such earnings as self-employed income on a return filed on or before the due date prescribed for filing such return (including any extension thereof)—

(A) a certificate filed by such individual on or before April 15, 1966, which (but for this subparagraph) is ineffective for the first taxable year ending after 1954 for which such a return was filed shall be effective for such first taxable year and for all succeeding taxable years, provided a supplemental certificate is filed by such individual (or a fiduciary acting for such individual or his estate, or his survivor within the meaning of section 205(c) (1) (C) of the Social Security Act) after the date of enactment of the Social Security Amendments of

1965 and on or before April 15, 1967, and

(B) a certificate filed after the date of enactment of the Social Security Amendments of 1965 and on or before April 15, 1967, by a survivor (within the meaning of section 205(c) (1) (C) of the Social Security Act) of such an individual who

⁶² P.L. 89-368, sec. 102(c), added subparagraph (E), applicable with respect to taxable years beginning after December 31, 1966.

died on or before April 15, 1966, may be effective, at the election of the person filing such a certificate, for the first taxable year ending after 1954 for which such a return was filed and for all succeeding years,

but only if—

(i) the tax under section 1401 in respect to all such individual's self-employment income (except for underpayments of tax attributable to errors made in good faith), for each such year described in subparagraphs (A) and (B) ending before January 1, 1966, is paid on or before April 15, 1967, and

(ii) in any case where refund has been made of any such tax which (but for this paragraph) is an overpayment, the amount refunded (including any interest paid under section 6611) is repaid on or before April 15, 1967.

The provisions of section 6401 shall not apply to any payment or repayment described in this paragraph.

Public Laws amending the Social Security Act (Public Law 271, 74th Cong., approved August 14, 1935, 49 Stat. 620) are listed below. The citation shown following the date of approval of the amending act is to the page and volume of the Statutes at Large where the particular act may be found. The short title, if any, of the amending act is shown following the Statutes at Large citation.

Public Law 722, 75th Cong., approved June 25, 1938 (52 Stat. 1094). The Railroad Unemployment Insurance Act.

Public Law 36, 76th Cong., approved April 19, 1939 (53 Stat. 581).

Public Law 141, 76th Cong., approved June 20, 1939 (53 Stat. 845).

Public Law 379, 76th Cong., approved August 10, 1939 (53 Stat. 1360). The Social Security Act Amendments of 1939.

Public Law 17, 78th Cong., approved March 24, 1943 (57 Stat. 45).

Public Law 235, 78th Cong., passed over veto February 25, 1944 (58 Stat. 21). The Revenue Act of 1943.

Public Law 285, 78th Cong., approved April 4, 1944 (58 Stat. 188).

Public Law 410, 78th Cong., approved July 1, 1944 (58 Stat. 682). The Public Health Service Act.

Public Law 458, 78th Cong., approved October 3, 1944 (58 Stat. 785). The War Mobilization and Reconversion Act of 1944.

Public Law 201, 79th Cong., approved October 23, 1945 (59 Stat. 546).

Public Law 291, 79th Cong., approved December 29, 1945 (59 Stat. 669). The International Organization Immunities Act.

Public Law 719, 79th Cong., approved August 10, 1946 (60 Stat. 978). The Social Security Act Amendments of 1946.

Public Law 239, 80th Cong., approved July 25, 1947 (61 Stat. 449).

Public Law 379, 80th Cong., approved August 6, 1947 (61 Stat. 793). The Social Security Act Amendments of 1947.

Public Law 492, 80th Cong., passed over veto April 20, 1948 (62 Stat. 195). Public Law 642, 80th Cong., passed over veto June 14, 1948 (62 Stat. 438). Public Law 174, 81st Cong., approved July 16, 1949 (63 Stat. 445). Public Law 734, 81st Cong., approved August 28, 1950 (64 Stat. 477). The Social Security Act Amendments of 1950.

Public Law 814, 81st Cong., approved September 23, 1950 (64 Stat. 906). The Revenue Act of 1950.

Public Law 78, 82d Cong., approved July 12, 1951 (65 Stat. 119).

Public Law 420, 82d Cong., approved June 28, 1952 (66 Stat. 285).

Public Law 590, 82d Cong., approved July 18, 1952 (66 Stat. 767). The Social Security Act Amendments of 1952.

Public Law 269, 83d Cong., approved August 14, 1953 (67 Stat. 580). Public Law 279, 83d Cong., approved August 15, 1953 (67 Stat. 587).

Public Law 567, 83d Cong., approved August 5, 1954 (68 Stat. 668). The Employment Security Administrative Financing Act of 1954.

Public Law 761, 83d Cong., approved September 1, 1954 (68 Stat. 1052). The Social Security Amendments of 1954.

Public Law 767, 83d Cong., approved September 1, 1954 (68 Stat. 1130). Public Law 325, 84th Cong., approved August 9, 1955 (69 Stat. 621).

Public Law 880, 84th Cong., approved August 1, 1956 (70 Stat. 807). The Social Security Amendments of 1956.

Public Law 881, 84th Cong., approved August 1, 1956 (70 Stat. 857). The Servicemen's and Veterans' Survivors Benefits Act.

Public Law 85–26, approved April 25, 1957 (71 Stat. 27). Public Law 85–109, approved July 17, 1957 (71 Stat. 308). Public Law 85–110, approved July 17, 1957 (71 Stat. 308).

Public Law 85-226, approved August 30, 1957 (71 Stat. 511).

Public Law 85–227, approved August 30, 1957 (71 Stat. 512). Public Law 85–229, approved August 30, 1957 (71 Stat. 513). Public Law 85–238, approved August 30, 1957 (71 Stat. 518).

Public Law 85-239, approved August 30, 1957 (71 Stat. 521).

Public Law 85-441, approved June 4, 1958 (72 Stat. 171). The Temporary Unemployment Compensation Act of 1958.

Public Law 85–785, approved August 27, 1958 (72 Stat. 938). Public Law 85–786, approved August 27, 1958 (72 Stat. 938). Public Law 85–787, approved August 27, 1958 (72 Stat. 939). Public Law 85–798, approved August 28, 1958 (72 Stat. 964).

Public Law 85-840, approved August 28, 1958 (72 Stat. 1013). The Social Security Amendments of 1958.

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Public Law 86-284, approved September 16, 1959 (73 Stat. 566). Public Law 86-346, approved September 22, 1959 (73 Stat. 621).

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Public Law 88-31, approved May 29, 1963 (77 Stat. 51).

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Public Law 89-713, approved November 2, 1966 (80 Stat. 1107). Public Law 90-36, approved June 29, 1967 (81 Stat. 94).

Public Law 90-97, approved September 30, 1967 (81 Stat. 249).

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